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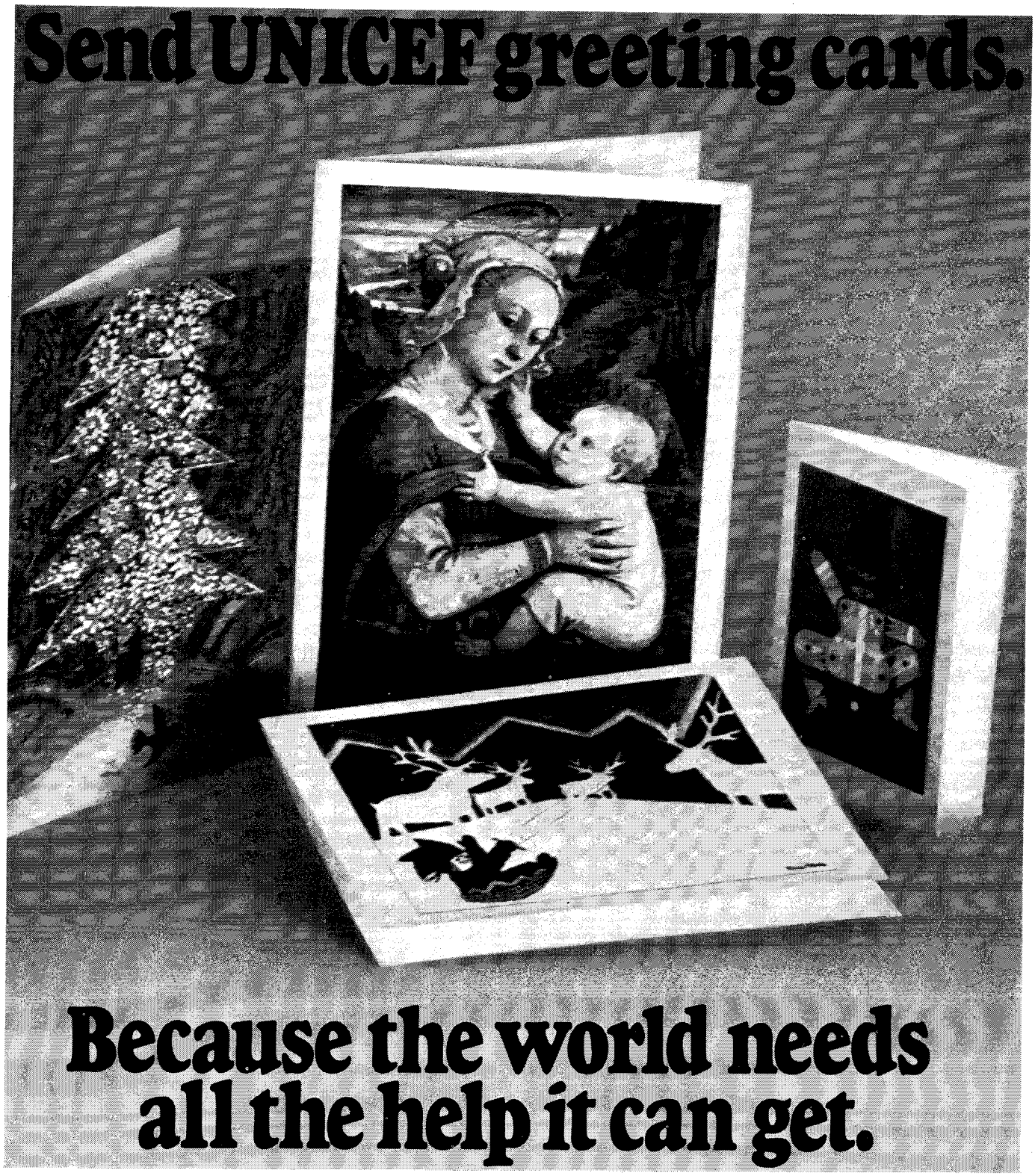

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TRB

from Washington
August 10, 1974

A Miserable President

Quite apart from Watergate this has been, in many ways, a disastrous administration. We got to thinking about it because of an anniversary. Five years ago (August 8, 1969) Mr. Nixon on nationwide television proposed a radical reform, a family assistance plan (FAP) which would put a $1600 floor under the income of a family of four. It was the brainchild of leprechaun Pat Moynihan when the President was going through his Disraeli phase.

Mr. Nixon squeaked into office in 1968 by an eyelash and "needed something" Moynihan wrote later, "to distinguish his administration from that of his predecessors." So he set out on welfare reform and called the existing system "a consuming, monstrous, inhuman outrage." This column was delighted.

So what happened? We still have the old system. The nation is approaching serious unemployment, and an improved welfare system might well help avert social disorder. But we are stuck with the original "mess," as Mr. Nixon called it. He lost interest in reform. After twice passing the House the bill required a compromise in the Senate, and White House pressure. Not a single Republican in the Senate Finance Committee voted for it. But Mr. Nixon rejected the compromise worked out by his then HEW Secretary Richardson. By then he was out to prove that McGovern's $1000-a-person "demogrant" was idealistic claptrap, and how could he prove that when he was pushing a radical proposal of his own? FAP faded away. Moynihan disappeared off into India.

In a lot of ways that's the story of this weathervane administration, quite apart from Watergate. One exception, perhaps, is foreign affairs, but we have jaundiced views on that, too. America wanted to get out of Vietnam without admitting that it had made a mistake in getting in. So Mr. Nixon created a "moral victory" (after losing 20,000 more lives), and proved that it was a genuine victory by getting our prisoners back. What a victory. And Kissinger got a Nobel prize.

The administration improved relations with Peking and Moscow, which was fine. Our hunch is that if a Democrat had tried the same thing Mr. Nixon would have been at his throat, but so what? This is one place where inconsistency paid off.

On the domestic front, however, the Nixon story is miserable, quite apart from Watergate. He is the first activist conservative we have had for a long time. Maybe that has aggravated his difficulties.

Some mishaps have been spectacular. He called a Smithsonian conference in 1971 to try to fix up the international exchange system and agreed to devalue the dollar eight percent. He hailed this as the "greatest agreement in the history of the world." But it didn't work and the dollar had to be devalued an additional 10 percent two years later. People noted Mr. Nixon's hyperbole with wonder.

The Russian grain deal is another example. Russia bought one-quarter of our crop, and we eagerly paid them a bonus for taking it. It sent US prices skyrocketing. There was a lack of understanding in this, a lack of imagination, that seemed like a flight from reality.

Mr. Nixon's "Project Independence" has also caused wonder among oil experts. This is the formula by which the President has calmed the public's apprehensions over the energy crisis. Presidential leadership could have created a great movement for action in the emergency but this seems now to have dissipated. Free enterprise, Mr. Nixon implied, will save us and he hopes that "by 1980" the country will no longer be dependent "to any significant extent" on foreign imports. Nonsense, say experts; they just don't believe him. It reminds them of the Smithsonian declaration.

Mr. Nixon has dealt with more subtle matters. Take race, for instance. Every 10th man in America is black and the pressure against second-class citizenship creates a steady tension in our society. Many whites prefer not to think about it and that is true of Mr. Nixon, too. The great thing, some think, is to keep the avenues of improvement open. But the Nixon record here is poor. Statistics can't measure emotions, but a recent survey by the Poverty Institute of the University of Wisconsin says that the median black family income when Mr. Nixon took office was 61 percent of the white median, and that it has now dropped to 58 percent. It will drop more in a recession.

For awhile the Supreme Court was the agency of social amelioration, but Mr. Nixon took care of that. With the aid of his four conservative appointees, the court has just ruled, five to four, that while it is illegal to segregate schools, nothing can be done about all-black schools if they occur in the increasingly black big cities. The cities are noosed by the white suburbs. Presumably the whites will keep on moving out. Unemployment in the ghetto is 40 percent. White and black children will not learn to accept each other in schools. It sounds like American apartheid. Nixon didn't create this situation, of course, but he has been doing nothing about it, and doesn't seem interested in it.

On the economic front the Nixon record is lamentable, and may get worse. The President has brought in a corporate crew of tough tycoons as innocent of politics as Haldeman and Ehrlichman. There is budget director Roy Ash, once head of Litton Industries; Commerce Secretary Fred Dent, former head of Mayfair Mills (textiles); Kenneth Rush, economic coordinator, former president of Union Carbide; Treasury Secretary Simon, a partner of Salomon Brothers, Wall Street brokers, and so on. Now he is bringing in Alan Greenspan, Wall Street big business consultant, to head his Council of Economic Advisers. Greenspan seems to have an almost metaphysical faith in free enterprise; he is quoted as saying that, theoretically, he opposes the progressive income tax.

They can't do much worse than the old advisers but one wonders if these practical men of affairs know what it means to be on the receiving end of a recession? Witnesses before the Senate Select Committee on Nutrition the other day testified that a third of the pet foods now being sold in ghettos goes for human consumption. Welfare cuts to balance the budget under such circumstances we think would be dangerous.

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Contents

-8 Comment
Impeachment Prospective, Coming Up, Half Loaf Legal Services, Behind the Eight Ball
9 The Nixon Watch: Judgment Days —*John Osborne*
11 Milk Money—*Brooks Jackson*
12 Woeful Economy—*Lincoln Caplan*
14 The NFL Strike: Athletes as Chattel —*Michael Roberts*
17 The Cyprus Crisis—*Stanley Karnow*
20 Films—*Stanley Kauffmann*
21 Books—Reviews by *Lewis J. Paper, Jason Berry, John Leonard, William McPherson, William Kennedy, Paul Marx, James Walt, Howard Dietz*
32 Fine Print—*Doris Grumbach*
32 Poem—*Grace Beacham Freeman*

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Impeachment Prospective

Last March we said that, "If the evidence persuades that President Nixon was a knowing participant or conniver in conspiracy to obstruct justice, whatever transparent veil of national security the conspiracy tried to disguise itself under, he is impeachable. If the evidence shows that the President ordered or connived in wiretapping or other invasions of privacy for personal or partisan purposes under circumstances that afforded not so much as a pretext of national security, he is impeachable." A substantial bipartisan majority of the House Judiciary Committee has now recommended impeachment of the President on both counts and in addition has found Mr. Nixon impeachable for defying its subpoena. The committee's work was well done. Its 38 volumes of information, including both damning and exculpatory entries, are the product of an earnest search for truth. Chairman Peter Rodino and his staff get high marks for both diligence and diplomacy. The days and nights of deliberation we observed on television were boring at moments, tendentious and pretentious at others, but on the whole marvelously instructive. The committee proved to be anything but the "kangaroo court" it was tagged by White House spokesman Ronald Ziegler, and to a public that has been inclined to scoff at members of the House as a bunch of political hacks, the shock was salutary. Here before us were relatively unknown men and women who showed themselves competent, articulate, judicious—such representatives as George Daniel of California, Paul Sarbanes of Maryland, Walter Flowers of Alabama, James Mann of South Carolina, Hamilton Fish III of New York, Tom Railsback of Illinois, William Cohen of Main, M. Caldwell Butler of Virginia, Barbara Jordan of Texas and Ray Thornton of Arkansas. The anti-impeachment leader, Charles Wiggins of California, was cool and effective. One can imagine such legislators talking civilly and sensibly about controversies, putting something ahead of party, campaign contributors and reelection. Speaker Carl Albert, who had to be pushed into permitting televising of the hearings, is said to have been amazed and pleased at how well his colleagues came across. Perhaps he will now actively support the televising of the forthcoming House debate.

The first act of the drama is over, but even before the second and third are played out, we can begin to see that what we are witnessing

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is not all tragedy. A detached view, in our opinion, suggests that the revelations of misuse of executive power, the indictments and the convictions of White House agents for perjury or illegal entry, all leading to the impeachment of the central figure in this conspiratorial web, have not done irreparable harm to the presidency or to confidence in the integrity of public servants or to representative government itself. Admittedly if one looks only at the accumulated evidence of wrongdoing, a melancholy judgment is justified. But there is other evidence, a lot of it, that points in a different, more hopeful direction.

During the Judiciary Committee discussions, we heard and we shall often hear again during the House and Senate debates, many words about the glories of the American Constitution. The ceremonial salutations are not all humbug, for the constitutional procedure for turning a President out of office, invoked only twice in the past 187 years, is working precisely as intended. The procedure is cumbersome and time-consuming, because it was not meant to be used as a handy tool to displace an unpopular Executive. It was not meant to deprive the President, for causes less than compelling, of his assured tenure. The framers of the Constitution perceived that a President who holds power only by day-to-day sufferance of the legislature is a President who cannot preside over a stable, secure government, who cannot effectively carry out his duties at home or abroad. A strong, independent Executive is a cornerstone of our constitutional democracy; that has been understood and respected from the start, as it has also been understood that we need not suffer the continuance in office for his full term of a President who has committed intolerable wrongs, that Congress is empowered to remove a President who has grossly and repeatedly betrayed his oath of office. That is the power the Congress is using, using scrupulously, and it is thereby bolstering, not weakening the constitutional structure.

We did not need these impeachment hearings to prove that power corrupts. But they are demonstrating that the corrupt can be held accountable. The second term of Richard Nixon will give the textbooks and the practitioners of politics an unforgettable lesson. We cannot conceive that any future President in this century, any cabinet officer, any White House or election committee official will conduct himself with such wanton disregard of law, of truth, or of decent respect for the opposition as has been exhibited in this administration. Nor, thanks partly to an alert press, is any future President likely to take it for granted that he can order or countenance illegal snooping or the covering up of misdeeds, confident that all will be well if he packages improprieties or illegalities in the wrappings of national security or executive privilege. The circumspection and restraint that will henceforth come more naturally to Presidents of the United States is bound to apply as well to underlings in all federal agencies, whether the CIA, the FBI or the Internal Revenue Service. It will not henceforth seem as right as it did under Richard Nixon to do anything one is told to do, because the order comes from "the highest authority." The lesson has been learned, painfully, that no executive shield can protect subordinates from justice. The reality of the principle of accountability has been taken out of the realm of abstraction and made concrete by the indictments and the convictions that have already occurred.

There's another by-product of these "horrors" that may have long range benefits, and that is the response of some of the Republicans to what has been exposed. Of course there has been blind, blathering partisanship, but the debates of the Judiciary Committee brought to the public's attention an impressive number of Republicans who plainly are determined to be guided only by the evidence and their own consciences. If they survive politically over the coming years, the country will be the beneficiary. If the Republican party follows the lead of these men of caliber, it may yet escape its recent captivity by big business and parochialism. It is important that it do so, for just as the national government is strengthened by a stable and vigorous Executive, so that government is strengthened by a two-party system that provides voters with a tolerable alternative. The impeachment debates, if they do nothing else, can prove that high-mindedness and intelligence are not a one-party monopoly. The Republicans to whom we refer are reminding Americans whose memories go back no further than Goldwater or Nixon, that the Republican tradition also includes Hiram Johnson, Earl Warren, Gifford Pinchot, Henry Stimson, William Borah and Theodore Roosevelt.

Finally the Watergate balance sheet may show a plus that, while unintended, is nonetheless real. One-third of the United States Senate and the entire House will be chosen this November. That election can establish a more progressive balance of power in Washington, a balance comparable to 1934 and 1964, when there was not simply a Democratic majority in both Houses but a progressive majority. We don't venture to predict what an interim Ford presidency might produce; the pressure on Ford to surround himself with advisors of stature will be heavy. But it is already apparent that the political initiative has started to move toward the Congress, which in these past months has begun to get a firmer grip on itself and on its responsibilities. An infusion this November of new progressive energies into the legislature will not guarantee instant prosperity or peace, but the prospect gladdens the heart.

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Coming Up

The House Judiciary Committee staff has worked hard, but it has more to do. Demands by Reps. Sandman, Wiggins and Dennis for more concrete evidence of presidential complicity in alleged misconduct by White House aides have some merit. There are gaps in the committee's evidentiary material that must still be filled, since almost all of the impeachment evidence was developed through a sifting and distillation of investigations by others, including the Watergate special prosecution force, the Senate Watergate committee, court hearings and procedures, other congressional inquiries and the White House tapes of conversations. Prior to the House floor debate and certainly before any Senate trial, the committee's investigators must at least interview additional witnesses.

For example, Article I of the committee impeachment bill refers to "misuse [of] the Central Intelligence Agency" in an effort to contain the spreading scandal. At issue is whether Mr. Nixon knew on June 23, 1972 that the FBI investigation of the Mexican checks and one from Kenneth Dahlberg would lead to the President's reelection committee, not to the CIA. Former White House Counsel John Dean's testimony before the Senate Watergate committee implied that presidential aides H. R. Haldeman and John Ehrlichman did know the investigation would lead to the campaign committee. Interviews of former Nixon campaign officials including Treasurer Hugh Sloan, Finance Chairman Maurice Stans, former FBI Acting Director L. Patrick Gray and check writer Dahlberg could help determine *when* on June 22 or June 23 the idea was hatched to make use of the CIA to block the FBI inquiry on the checks. Those same individuals plus Dean could also throw more light on when that cover-up strategy was passed on to the White House and to whom.

Article II offers another illustration of why further investigation is needed. One specific charge refers to concealment of so-called national security wiretaps in the White House by order of the President, so as to avoid their disclosure in the Ellsberg prosecution—a use that would have been required under court procedures, since the accused Ellsberg had been overheard on the tapes, as had Morton Halperin, a consultant for the defense. Former Assistant Attorney General Robert Mardian last May told FBI investigators he delivered these wiretap records to the Oval Office. Mardian would not say to whom, but he did say his delivery was at the order of the President. Mardian has never been questioned about the specific connection between the President's order and the Ellsberg prosecution.

Again, seeking to rebut allegations that the President made "false or misleading public statements" as part of the plan to obstruct justice, Rep. Sandman insisted in committee that Mr. Nixon on June 22, 1972—five days after the break-in—is on record as saying that such activities had no place in our democratic election process. No one challenged that misstatement of Sandman. No one on the committee pointed out that in his conversation of March 21, 1973 with John Dean, the President said of the burglary and wiretapping: "I can see their doing it earlier. I can see the pressures, but I don't see why all the pressure was on then." Nor did anyone mention that in his March 13, 1973 conversation with Dean, Mr. Nixon asked, "Did they never get anything out of the damn thing?"—meaning the wiretap. Dean replied, "I don't think they ever got anything, sir." "A dry hole?" Mr. Nixon responded, adding an expletive. It must be brought out on the House floor that at no time did the President privately indicate disapproval of the idea of a burglary against his political opponents.

Mr. Sandman likewise made much of Assistant Attorney General Henry Petersen's testimony that he had received no information implicating the President in criminal activities concerning the Watergate cover-up. The hearing transcript shows, however, that Mr. Petersen's comment was qualified to cover the period only up to April 27, 1973—well before the White House tapes became available. Mr. Sandman also said Petersen had not taken offense when the President, after promising not to disclose information Petersen had given him about the investigation, turned around and discussed it with H. R. Haldeman and John Ehrlichman. What Sandman left out was that Petersen would *not* express an opinion, saying it was for the congressmen to decide whether the President's suggestion to Haldeman and Ehrlichman that they work out a story to meet the disclosed allegations against them was impeachable conduct.

Half Loaf Legal Services

A bill signed late last month by the President ensures that legal services for the poor, one of the more successful programs of the Office of Economic Opportunity, will survive the anti-poverty agency's dismemberment by the administration. The bill also provides, however, for the imminent demise of the 15 "back-up centers," outside agencies mostly at large universities that have provided important research support for the approximately 2500 legal services lawyers. Although the legal services program will continue under the auspices of a to-be-created independent public corporation, with an increase in funding from the present level, it is specifically prohibited from undertaking any legal research "by grant or contract." It is an odd restriction: no legal services organization of any kind can get along without research (that's what a law library is for), and it should not be a

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matter of concern to Congress whether the new corporation contracts for the research it needs in order to provide the poor with legal assistance, or whether it does it itself. The reason this incongruous provision was included was that the White House made it clear it didn't approve of the work the back-up centers are doing and would rather not have a legal services program at all than continue them.

The back-up centers have always been anathema to stand-patters, because research into the types of legal problems that plague the poor—consumer complaints, landlord-tenant disputes, racial discrimination in employment—is not easily distinguishable from developing legal methods to fight injustices built into the system. Sen. Jesse Helms, a Republican from North Carolina, called the back-up centers "a vehicle for anti-social agitation." He and those who agree with him argue that the centers are hotbeds of radicalism that should not be funded by the taxpayers.

These objections would have carried little weight with the key sponsors of the bill, Sens. Gaylord Nelson (D, Wisc.), Jacob Javits (R, NY) and Robert Taft, Jr. (R, Ohio), had the administration not told them to expect a veto of the whole legal services bill if back-up centers were included. That threat had to be taken seriously, impeachment politics or not, and after several weeks of hesitation, the bill's prime supporters agreed to delete authorization for the centers. According to a Senate staffer, since the votes did not exist to override a veto, the only choice was to accede reluctantly to the administration. "It was a realistic decision: it was back-up centers versus the rest of the program."

Research on the legal problems of the poor will of course continue. As Sen. Javits said on the floor, "One might just as well cut off his right arm as to be told that he cannot have research." The work will be done directly by employees of the new legal services corporation—without, however, drawing on the unusual abilities and legal scholarship that have made the back-up center lawyers so effective. Supporters of the program hope for interim public support of the centers until the corporation gets underway, and some of the centers expect to survive on private and foundation funding and on support from agencies other than OEO. Sources on Capitol Hill have indicated that there is some expectation that the broader litigation efforts of the centers can also be maintained in the corporation.

By signing the legal services bill, the President gave the program's advocates half a loaf but may have antagonized some of the anti-poverty agency's loudest critics, whose votes he may need in a Senate impeachment trial. James A. McClure (R, Idaho), ally of Helms and an opponent of OEO, criticized the President for signing the bill even without the back-up center provision; he apparently had had indications from the White House that it might be vetoed, even as modified.

Behind the Eight Ball

Why did the President wait until after the Supreme Court issued its eight-to-zero ruling against him to announce that he would "comply with that decision in all respects"? Anyone who is passingly familiar with the Court knows that nothing stiffens a justice's spine as much as the suggestion that the Court should not act because its mandate may be disobeyed. The same institutional cocoon that envelops Mr. Nixon when he speaks of his obligation to "protect the presidency" wraps itself around the Supreme Court when it senses a threat to the judiciary's authority to enforce the law. That lesson should have been learned 20 years ago when mobs sought to interfere with court-ordered integration of public schools in Little Rock and 10 years ago when state legislatures implied, in arguments before the Court, that judicial decrees directing reapportionment could not be enforced.

The ruling, when it came, appeared devastating because it was unanimous, and because it seemed to reject each of the President's arguments. But when compared with what the Court *could* have said and done, the final product must have brought sighs of relief in San Clemente—enough so to warrant the instruction that Mr. St. Clair begin the "time-consuming process" of complying. On close reading it is apparent that the unanimous opinion in the *United States v. Nixon* was the result of substantial give-and-take among the eight justices. It skips over precise factual questions whose resolutions Mr. Nixon would have found unacceptable, gratuitously endorses "constitutional underpinning" of his claim of confidentiality of communications between a President and his advisers, and spins a web of limitations around the procedures that are now to be followed that could, if Mr. St. Clair plays his cards right, tie up the dispute over the President's tapes for several months more.

Two precise and important factual questions are delicately avoided in the Court's decision. The first has to do with the characterization of the conversations sought by the special prosecutor. In the written brief submitted to the Court, there is much discussion of the fact that the subpoenaed conversations were "in furtherance of the continuing criminal conspiracy." St. Clair was pressed during oral arguments by Justices White, Powell and Marshall to explain how conversations of conspirators could be shielded by a constitutional privilege, when all other privileges recognized by law would evaporate if they are used to cloak discussions in furtherance of an illegal end. St. Clair's answer was a model of circular reasoning: "A criminal conspiracy is criminal only after it's proven to be criminal." In others words, until there is a verdict of guilty, evidence needed to establish guilt may not be demanded. The Court could have pursued this line and concluded, as it surely would have to if ever

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pressed to decide the point, that the policy of preserving confidentiality in presidential discussions—whether constitutionally founded or not—does not cover discussion in furtherance of obstruction of justice. Or, as some of the justices seemed inclined to do during oral arguments, the Court could have limited executive privilege to conversations relating to legitimate presidential functions. Either of these rulings would have meant that each of the President's tapes would have to be transmitted to the special prosecutor by Judge Sirica, once the judge found that what was being discussed was an illegal cover-up, or if he concluded from the particular conversation that it related to something not within the President's proper function.

Probably in order to achieve unanimity, the Court authorized no such sweeping disclosure. Not once in the opinion is there the slightest suggestion that subpoenaed conversations fall, in any manner, outside the President's executive function. While agreeing that Judge Sirica properly found that what was said in the Oval Office or in the President's EOB office could be relevant in the cover-up trial, the Court did so only because, in nearly every instance, the participants other than Mr. Nixon are defendants in the cover-up case. Judge Sirica is now authorized to give Mr. Jaworski no more than those "isolated" statements that "meet the test of admissibility and relevance" at the trial; he may not hand over full conversations simply because he believes they do not pertain to presidential functions, or because they relate to the cover-up: This standard demonstrates how unsatisfactory any disclosure under the Court order would be for purposes of the House of Representatives. Obviously the impeachment investigation needs more than "isolated" statements of defendants.

The second question deliberately avoided, although vigorously argued by the special prosecutor, concerns Mr. Nixon's earlier actions which were inconsistent with the claim made in the Supreme Court that absolute confidentiality for the Watergate tapes is essential. If any other person but the President of the United States claimed a right of secrecy for papers or discussions, after he had voluntarily published as much of those confidential communications and authorized as many disclosures as Mr. Nixon has, and after earlier waiver of executive privilege allowing testimony before the Ervin committee, and after his publication of the Watergate transcripts, he would be laughed out of court. Had the Supreme Court taken seriously the rule known as the first amendment to constitutional law—that constitutional issues are to be avoided when the facts of the case provide some nonconstitutional grounds for decisions—it could easily have said that the history of public actions by the President amounted to a waiver "of any constitutional claim he might now have." But that route, too, would have authorized wholesale transmission to Mr. Jaworski of the subpoenaed tapes, not merely "isolated" specific statements.

Mr. Nixon did not, of course, need or want a Supreme Court defeat, and particularly not at this time. But if he had to have one, he could hardly have arranged it much better, even at the cost of a unanimous loss. The Court has thunderously rejected an extravagant claim made on his behalf that he alone will be the final judge of the conversations available to the special prosecutor in the cover-up trial. But in so doing it has given his counsel a basis for claiming that the practical defeat amounted to a victory in principle and opened the door to additional contentions that may delay preceedings in the lower courts.

The Nixon Watch

Judgment Days

San Clemente

The little that is known of how the President lived and comported himself through the days of judgment that began to come upon him during his summer stay in California is summarized in this report.

We start with the morning of July 24. Eight of the nine members of the US Supreme Court unanimously rejected the substance of every argument that James St. Clair, the President's lawyer, had made in his behalf to the effect that this or any President is immune from judicial compulsion in matters that involve presidential communication with other people. The ninth member, Justice William Rehnquist, did not participate. The assumed reason was that he had been intimately associated with former Attorney General John Mitchell, one of the defendants in a criminal case that was involved in the infinitely larger issue before the Supreme Court. The fact, not necessarily determinative, was that the President had appointed Justice Rehnquist, praised him in public and cruelly derided him in private. The eight participating justices ruled in an opinion written by Chief Justice Burger, also a Nixon appointee, that the President had to surrender to federal Judge John Sirica the White House tape recordings and any other records of 64 White House conversations.

A distinction that press accounts tended to skip or elide was a vital part of the Supreme Court decision. It enjoined Judge Sirica, who had presided at previous Watergate trials, to take the greatest care to ensure that only those portions of the Nixon tapes and records that he found relevant to the criminal case involving Mitchell and other former Nixon associates be turned over to Special Prosecutor Leon Jaworski, who had originally subpoenaed the tapes and written records. It was not the order for total turnover to Jaworski that many accounts indicated it was. Chief Justice Burger

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noted in his opinion for the Court that "a presumptive privilege for presidential communications" is founded though not explicitly stated in the Constitution and that "the privilege is fundamental to the operation of government." But Burger and his fellows held with crushing breadth and finality that the President's "claim of absolute privilege" is constitutionally wrong and, in such a case as the one involved, must give way to the requirement that both prosecutors and defendants have for use in a criminal trial all of the evidence, including evidence in a President's possession, that may bear upon the guilt or innocence of defendants. It was the latest and perhaps the ultimate example of the ruin that the President had brought upon himself with what one of his White House lawyers called "those goddamned tapes."

A strange time ensued at San Clemente. St. Clair, who was there and at a press conference on the 23rd had said he had no reason to expect a decision on the 24th, had flatly assured Gen. Alexander Haig, the White House staff chief and communicator of most things to and from the isolated President, that the Court would not be deciding the case on the 24th. He based this on his understanding that the Court usually gave interested attorneys 24 hours' notice of important decisions and his office in Washington had had no such notice. At a party at his house the evening of the 23rd, Gen. Haig assured reporters that there would be no decision the next day in the Nixon case. How White House attorneys who are more familiar with Supreme Court practice than St. Clair is could have failed to tell him and Haig, and the President through them, that the Court in very sensitive cases often withholds notice to lawyers to "be at the counsel table" until as little as an hour before decision time is a mystery. Anyhow, that's what happened on the 24th. The President, Gen. Haig, St. Clair, Press Secretary Ronald Ziegler and Communications Director Ken Clawson, the persons principally involved in subsequent discussion, were caught flatfooted and flat-minded by the news at a little after 7 am Wednesday morning, San Clemente time, that the Court would be announcing its decision within an hour.

Now comes a part of the account that really mustn't be misunderstood or misinterpreted. A decision against the President and his claim of "absolute privilege" was expected. Charles Alan Wright, a distinguished constitutional lawyer who had endured a succession of incredibly stupid White House slights and remained loyal not so much to the President as to the proposition that he was entitled to the best available defense, had attended St. Clair's oral argument before the Court, listened to the justices' questions, and predicted afterward that the best the President could hope for was a six-to-two decision against him. What wasn't so certain, as I indicated in a report in this journal's last issue, was a decision that would be totally mandatory and would leave no room for maneuver. A hope that it wouldn't be unanimous also lingered. Partly in the hope of something short of a totally mandatory decision and implementing order, the President's spokesmen including St. Clair had been refusing for months to commit him to obey any Supreme Court decision and had abandoned a short-lived pledge in July and August 1973 that he would obey "a definitive decision," whatever that meant. It didn't mean and wasn't supposed to mean anything. But the hangover from that interim of calculated and abysmally mistaken noncommitment affected the half hour or so of discussion in Gen. Haig's office at the Western White House that preceded facsimile transmission from Washington of the long decision text and the additional half hour or so that St. Clair and others required to absorb the (for them) shaking thrust and thoroughness of the decision. During that brief period, there was some discussion of whether the President *would have to obey* the Court order. I am told and, absent evidence to the contrary, elect to believe there was then and later in the day no discussion and debate over whether the President *should* obey the kind of order that this one turned out to be.

Another aspect of this interim discussion and of the hours that followed before St. Clair announced the President's disappointment with the decision and his intention " to comply with that decision in all respects" made it exceedingly (though not undeservedly) difficult for White House spokesmen to dampen the persisting suspicion that Mr. Nixon spent the day trying to squirm out of compliance. It became known that the President called a few people and Haig called a good many more people in Washington and elsewhere, asking their advice, before the decision to comply was announced. What were they calling about, except to ask if there was any way for the President to escape compliance? About the President's calls, I have no firsthand knowledge. I'm told and in one instance *know* that Haig's calls dealt with how to do it and not with what to do. Haig was asked by a couple of people whom he called whether the President was going to obey. He is said to have replied, of course. Mostly he asked whether it should be done in a spoken or written statement, by the President or St. Clair or Press Secretary Ronald Ziegler, on TV or merely in a handout. St. Clair read a two-minute statement on TV. When Ziegler appeared later in the California press room, reporters gnawed at him with questions indicating the deepest doubt that Richard Nixon had decided without cavil or debate to obey the Court. It was all deserved. But, after the statement that he would comply, it was to this onlooker a painful reminder of the sad state of distrust to which Mr. Nixon has brought the country.

Worse was to come before the week and the California stay were ended, with the beginning of the House Judiciary votes to recommend the impeachment of

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the President and the acknowledged erosion of confidence among some of his most steadfast assistants, Haig included, that he would escape impeachment by a majority of the House of Representatives. So there will be rougher days in Mr. Nixon's presidency than the day of the Court decision. But it was a bitterly testing day for him. An assistant who was intermittently with the President before, during and after the hours that he spent in discussion of the Court decision with St. Clair and Haig said that Mr. Nixon was utterly cool, unflustered, amused by a chance opportunity to keep two visitors waiting half an hour beyond their appointed time of meeting. An assistant who worked with the President on an economic speech that he was to make the next day said that during two hours in the afternoon at this task he never mentioned the decision and concentrated totally upon the speech. A frequent companion of the President who is trained to note physical characteristics insisted that on this and other days Mr. Nixon really appeared, as his spokesmen kept saying, to have recovered from the phlebitis that pained him in the Middle East and caused me to wonder in print whether the President deliberately aggravated it for awhile.

Even about that kind of thing, with matters allegedly going well, his spokesmen either don't know or can't tell the whole and simple truth. Press Secretary Ziegler and Deputy Press Secretary Gerald Warren said within hours of each other that the President no longer bandaged his ailing left leg just above the ankle and that he was wearing an elastic support sock on it. These are what Nixon spokesmen call perfectly consistent statements.

John Osborne

Still Flowing

Milk Money

At a little past five in the afternoon of March 23, 1971, in the Oval Office of the White House, John Connally briefed Richard Nixon about how the big dairy co-ops milk their farmers for political donations.

"Very frankly, they tap these fellows—I believe it's one-third of one percent of their total sales or $99 a year, whichever is—"

"Like a union," Nixon said.

"Oh, it's a check-off. No question about it," said Connally. "And they, they're amassing an enormous amount of money that they're going to put into political activities, very frankly."

A few minutes later Nixon ordered an increase in the government support price for milk. He acted against the advice of his agricultural economists. According to the House Judiciary Committee's transcript of the meeting, he seems to have believed that Congress might beat him to the punch, costing him votes in the Midwest. The dairymen's money machine pumped $632,500 into Nixon's campaign after that decision. It also fed $293,000 into the campaigns of the House and Senate members who had sponsored the price-support bills that Nixon feared would pass. For the dairymen it was money well spent. The price increase was worth an estimated $300 million to the nation's milkers, of which roughly $75 million went to the members of the three big co-ops that donated the political money.

Little wonder, then, that the dairymen's money machine still gurgles along happily, relatively unaffected by months of embarrassing Watergate disclosures. So what if milk money paid for the Ellsberg break-in? So what if the campaign managers for Hubert Humphrey and Wilbur Mills pleaded the Fifth Amendment when asked about milk money? So what if Connally, indicted last week, is alleged to have taken $10,000 in milk money as a bribe? So what if Nixon himself faces a possible bribery rap? The check-off money still flows from the farmers' milk checks and into the political bucket. $3700 a day. $111,000 a month. $1.3 million a year.

The flow is so rich that since the last election the three big co-ops have given money to one of every seven members of Congress, and they still have $2.2 million left over. That's more than one-third the total held by all of organized labor, with its millions of members. It's one-seventh of all the money held by all nationally registered special-interest groups put together. One of the dairy co-ops alone has $1.55 million, and was the richest political trust in the nation until the American Medical Association hoarded $1.8 million to defeat the Kennedy-Mills health legislation.

One of the reasons the dairy co-ops have so much money in hand is that they have had a bit of trouble giving it away. Some candidates, although by no means a majority, have returned donations to the dairy trusts. The spectacle of politicians actually returning donations is as rare and remarkable a phenomenon as Kohoutek's comet. The dairymen believe it will last about as long and amount to about as much. Still, it's worth examining.

By my figuring, candidates have returned about one-third (32.4 percent) of all the money the three co-ops have given to individual campaigns since last September 1, about the time the milk fund disclosures started showing up on front pages regularly. About half of it was given back by one man, Sen. Robert Dole, the former GOP national chairman whose name has popped up repeatedly on the periphery of the milk fund investigations. Dole gave back $15,600. A Watergate-related scandal could sink him in his tight reelection race. "As a former national chairman I guess I'm a little suspect anyway," he told me. "So why take

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any chances?" Dole wasn't always so sensitive. He used to accept free plane rides from the milk producers, and got speaking fees of up to $2500 from them.

Others who returned large sums are Democratic Gov. Wendell Anderson of Minnesota, $6000; Rep. Henry Bellmon (R, Okla.), $5000; former Rep. Abner J. Mikva (D, Ill.), $2000; Sen. Adlai Stevenson III (D, Ill.), $1500; and Rep. James R. Jones (D, Okla.), $1000. Three members of the House Judiciary Committee—Rangel, Railsback and Owens—gave back small sums to avoid a conflict of interest in the impeachment investigation of the milk fund deal. (Thirteen others kept dairy donations, and Owens retained money given to him before the investigation began.) In all, 11 candidates returned $32,150, a little more than one week's take for the co-ops.

The dairymen I talked to don't seem worried by this. "When the problem is no longer heated in the public, candidates are going to go back to the organizations that have been with them in the past," the treasurer of one of the big trusts told me. Another milk fund treasurer predicted candidates would start accepting more dairy money with the approach of election day. "I think you will see it pick up the closer we get to November," he said.

Meanwhile plenty of politicians are still taking milk money. Sen. Herman Talmadge got $10,000. He took it as the Senate Watergate committee, of which he is a member, was investigating the milk fund affair. The co-ops gave it to him because he is chairman of the Agriculture Committee, which passes on dairy legislation. Humphrey, another member of the Agriculture Committee, got $4100 to pay off presidential campaign debts. On the House Agriculture Committee, $15,000 went to Rep. David R. Bowen (D, Miss.), $5090 went to Jerry Litton (D, Mo.), and $5000 to Frank A. Stubblefield (D, Ky.). Sen. Fulbright got $2000 in his losing race for renomination.

Political parties as a body are even less embarrassed about taking milk money than individual politicians. The co-ops have given $57,473 to Democratic party committees and $35,540 to GOP committees since September 1. The money gets passed along to individual candidates, but with the stigma laundered out. It is a safe bet the co-ops expect some return on their money.

If most politicians show little shame in taking the money, the dairy farmers are even less apologetic about giving it. The rate of donations has dropped a scant eight percent this year as compared to last year. That can be accounted for by the drop in numbers of co-op members brought about by the general decline in the number of dairy farmers. I did find a couple of farmers who had stopped giving through the check-off system. One of them told me he was tired of the publicity. Another said he stopped giving because he thought the government was doing too little for dairymen. Neither expressed any moral misgivings. One of the dairy fund treasurers I spoke to was contemptuous of the candidates who sent their donations back. He said they were "using the milk funds as a political goat." He spoke loftily of "seeking to work in a partnership with government."

The dairymen are probably right. When the heat's off, the candidates will be back with their hands outstretched.

Brooks Jackson

MR. JACKSON *is a Washington newspaperman who has written extensively on the milk fund scandal.*

The Babel of Experts

Woeful Economy

In his February 22, 1973 State of the Union message, the President said:

"The state of our Union depends fundamentally on the state of our economy. I am pleased to report that our economic prospects are very bright. For the first time in nearly 20 years, we can look forward to a period of genuine prosperity in a time of peace. We can, in fact, achieve the most bountiful prosperity that this Nation has ever known . . . we have a good chance to reduce the overall rate of inflation to two and a half percent by the end of 1973."

Midway through 1974 the inflation rate is near 13 percent. The Commerce Department reports that real output declined for the second consecutive quarter of 1974. A bank journal, *Economic Week*, says the economy is "being gripped by a pervasive recession unlike anything we have experienced since 1957 or '58."

Secretary of Commerce Dent considers the term recession "too severe to characterize an energy-related spasm," and statistics from the National Bureau of Economic Research give him some support. In previous slumps, industrial production fell at least seven percent; now it is rising at the rate of 1.6 percent. The jobless rate was 6.1 percent or greater during each of five recessions since World War II; today the rate hovers around 5.2 percent. The first and second quarter decline in GNP is not the only index of economic health. And yet an apt description of the economic situation is Churchill's remark about the Russians—"a mystery wrapped in an enigma." A rise in price levels and a decline in real output—called stagflation—has everyone baffled. Even though a scarcity of food and the Arab oil embargo strained an already inflationary economy, nobody can satisfactorily explain why a nation rich in technical skills, manpower and resources should be so worried about major economic disruptions.

A year ago Herbert Stein, chairman of the Presi-

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dent's Council of Economic Advisers, who will leave the administration for the University of Virginia in the autumn, said: " . . . there is apparently the feeling in the country on the part of the people that they are worse off than they were, say a year ago, whereas our statistics would seem to indicate on the whole they are better off." What did he mean? Last year, with inflation increasing at 8.8 percent annually by December, real spendable weekly earnings declined at 3.1 percent for the year and 4.4 percent in the fourth quarter alone. With inflation near 13 percent for the first half of this year, people have continued to suffer accordingly.

"Why don't they give the facts?", Stein has asked of his critics. That's easy: it's the explanation for the facts and solutions to problems posed by the facts that lie hidden. It is a fact, for instance, that the Nixon administration has produced the first $200 billion and the first $300 billion budgets—and the largest peacetime deficit in our history. It is a fact that the 1973-1974 inflation is the most severe experienced by the United States since 1947. What's to be made of such facts?

Stein is now suggesting that the reason we're in trouble is that we're unwilling to pay the price of stopping inflation. Who's unwilling to do what? Who should tighten his belt? The fat? The lean? Everybody? Will everybody be better off if everybody firmly resolves to do with less? Less of what? And what about the government itself? What should it cut out? Administration spokesmen contend that the old time religion of government economy, a tight monetary policy and a restricted budget to reduce demand are the answer to inflation. Stein is against a tax cut, because he does not want to put $5 billion to $10 billion of spending money in the hands of the people. At the same time, he's against raising taxes, because the administration pledged it would not do so in the second Nixon term. Secretary of the Treasury William Simon got himself in hot water when he said his staff was working on a package of tax changes; he quickly retreated, going along with Nixon's other major economic advisers—Mr. Rush, Mr. Ash and Mr. Stein: we should cut the budget instead. But the biggest item in controllable expenditures goes for defense, and they don't want to cut that.

One of Kenneth Rush's White House deputies claims that "we know what to do. Now we just need to do it." He didn't say what it was. His boss and Mr. Ash agree in principle that the budget must be held as close to $300 billion as possible, but they disagree about how urgent the cuts really are. Ash says the task is difficult, not urgent. Simon says $20 billion in cuts -- an austerity program—is imperative. Alan Greenspan, who will succeed Stein at the CEA in September, says cuts should be made, although it won't be easy. Stein says, "The big struggle we have now isn't getting the $305 billion down to $300 billion . . . but to keep the $305 billion from becoming much bigger." And the President has announced that he will work "toward a goal of $300 billion."

Arthur Burns of the Federal Reserve Board has noted the dramatic 100-point stock market drop since a March '74 high and has tightened Fed money supply policy to bring the interest rate of banks to the present record high in an effort to slow inflation. But if interest rates become prohibitive, either there will be little new investment (thus work and goods) or the costs of what new investment produces will continue to soar. Conversely, if you increase the money supply to get interest rates down, inflation will go up at least temporarily, because the increase in available money in a market where the supply of goods is limited will force prices higher.

Harvard Prof. Otto Eckstein warns that a long-term policy of tight money will cause a disastrous outflow of savings from thrift institutions into high-yielding short-term investments, like the $650 million of variable rate notes the public snapped up from Citicorp at the end of July. He says the policy could "topple the financial system." And Alan Greenspan thinks the nation's savings institutions will rupture with "massive withdrawals" when short-term interest rates exceed 12 percent. But they're near that now. Greenspan warns that "a crisis might put us beyond the scope of any conventional solutions to our inflationary problems within this decade." If it comes to that, what unconventional solutions might he propose?

Outside the administration there is no shortage of suggestions about how to deal with inflation. Unfortunately, however, there's no consensus. Milton Friedman argues that unemployment is an inevitable side effect of curing inflation. He recommends price escalator or indexing clauses in the settlement of private and government contract disputes. The indexing would allow compensation, up and down, for changes in the cost of living—not the consumer price—index. By tempering the costs of wage settlements in real terms, employers would be able to keep more people on the payroll; the continued productivity of an economy with a higher rate of employment would lead to a greater supply of goods, which usually mitigates price rises. Friedman scoffs at the thought that his plan would build inflation further into a system that already has an inflationary bias, although no one predicts a fall in prices, and thus wages, in the near future.

Others in the trade believe that the administration ought to go back to policies it has abandoned. John Kenneth Galbraith admits that no definitive answer to the inflation issue exists, but wants the administration to reduce military spending, put higher taxes on luxury items and give a tax break to those with lower incomes. Galbraith thinks that an administration that is serious about inflation could bring it down to two or three percent within 12 or 18 months. But Galbraith would have the kind of economic controls

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the administration terminated on July 1. And where's the majority for that? Some of Galbraith's colleagues comment upon the sophisticated tie between inflation and political constraints. James Tobin of Yale writes that, "Wage guideposts might be more acceptable if workers were assured that the burdens of layoffs and short time were not piled on top of the inescapable burdens of commodity sacrifices." So he calls for a social treaty between the administration and labor. George Perry of the Brookings Institution gives high marks to wage-price controls in 1972 for curbing inflation and would offer a tax cut to labor to accept a national wage standard—a form of social contract. The tax cut would offset the increase in food and fuel prices which added significantly to an already inflationary trend in the economy. Whatever you call it—an understanding, a dialogue, a social treaty, self-discipline or pride—cooperation among different sectors of government and the economy demands more forceful governmental intervention than the policy of patience counseled by the administration. In mid-July there were 600 labor strikes, the largest number in 20 years. It is understandable that unions seek protective clauses against inflation in the new contracts providing for cost of living increases, but rising labor costs *will* cause price rises and touch off another cycle of inflation. Already there have been large wage settlements in San Francisco, where the plumbers received an 18 percent increase in payment; in Portland, Oregon, where the welders and other metal craftsmen got 38 percent to last until October '76; in Tampa, Florida, where the carpenters got 30 percent for the next two years. Charles McDonald, who headed the Cost of Living Council's office of wage stabilization, says "without controls you don't have the ability to keep things manageable."

Secretary Simon says profits must be encouraged so that people will invest their money rather than spend it. Whose profits? He must be talking about investment on a smaller scale than that of the oil companies, for with tensions in the labor force due to unchecked inflation and profits of the oil companies up substantially—Occidental Petroleum reported a 402 percent increase for the first quarter of this year—it is difficult for some in the labor force to ignore the old-fashioned thought that the inequalities between them and the corporations are increasing.

The unemployment mark has remained stable since January despite the downturn in the economy, which perplexes most theorists. Moreover, the trade-off between unemployment and inflation as explained by the Phillips Curve hasn't happened. Younger economists suggest that the old paradigms of economic theory may be outmoded, and that the present crisis brings to the fore problems of economic structure that Marxist economists have studied for years. Other theorists point to the instability of the international monetary system and to the recession in the two largest market economies besides the US—West Germany and Japan—as evidence of a globally significant economic problem; they point to US reliance on foreign countries for raw materials and to the cartels forming in the copper and bauxite industries as evidence of a shift from a buyer's to a seller's market in the world community. Is it possible that the industrialized, capitalist West can no longer keep its books balanced and its economy running on a fairly even course? We don't know. And if the economists know, they're not saying or they're saying it in a dead language few understand.

Lincoln Caplan

The NFL Strike

Athletes as Chattel

by Michael Roberts

PR-wise, as they say in the White House, the professional team-sports athletes in this country are up against it when they campaign for their rights.

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One source of their frustration is a body of mythology that they themselves, for commercial reasons, have permitted to flourish: the myth that sports are useful in evoking all the nobler impulses; the myth that the quality of civic life varies directly and the ethnic friction inversely with the success of a given

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city's pro franchises; the myth that it's a privilege to play ball.

With roughly a century to work its way into the national consciousness, the mythology has taken hold rather firmly, even in the office of the Vice President, who recently told *Sports Illustrated:* "A winning pro football team like the Dolphins can galvanize an entire area," Gerald Ford wrote. "Washington rallied around the Redskins." Ford did not elaborate on the nature of the galvanization or of Washington's rally. Certainly it is gratifying to believe all sorts of greater good flows from the Redskins' won-lost record, but there is no known evidence that a ball club functions in that sense as anything more than a common denominator for small talk.

It's all but impossible to combat the pervasive notion that there is something inherently ennobling about sport, or to break the resistance of almost anyone not directly involved to regarding a team as a business enterprise like any other, and there's no more instructive example of this than the majority opinion written by Supreme Court Justice Harry Blackmun in the case of Flood *v.* Kuhn. Curt Flood was petitioning the Court for the right to go to work for the employer of his own choice. He was putting forth the serious proposition that professional baseball denies its players basic constitutional rights accorded to employees in every other occupation.

Blackmun opened his opinion (handed down June 19, 1972) with several pages on the lore and legend of baseball. He used phrases such as "an outpouring of local pride" toward the Cincinnati Red Stockings of 1869. He spoke of "the ensuing colorful days" and of "tinder for recaptured thrills, for reminiscence and comparisons, and for conversation and comparison in-season and off-season." He recited the names of 86 old-timers, from Old Hoss Radbourne who pitched baseball's first perfect game, to Bill Wambsganss who perpetrated the only triple play in World Series history. In footnotes Blackmun entered an excerpt from Grantland Rice's poem, "He Never Heard of Casey," and the entirety of Franklin Pierce Adams' "Baseball's Sad Lexicon," popularly known as "Tinker to Evers to Chance."

Perhaps to sophisticated legal minds the purpose of this approach was clear. To some observers, however, it seemed as appropriate as prefacing an opinion in a civil rights case with a paean to the joys of life in the antebellum South, along with the lyrics to "Dixie," "Swannee River" and "Massa's in the Cold, Cold Ground."

Need it be said that Curt Flood lost his case and that professional athletes have since all but abandoned litigation as a means of changing the conditions of their employment? Collective bargaining is now considered their best hope. And that, in oversimplified terms, is why the National Football League's veterans opened the training season walking picket lines instead of reporting to camp to begin sweating off their off-season weight gains.

Thus began only the third strike in the history of the major sports leagues. The NFL had one in the summer of 1970 which, combined with a lockout by the owners lasted 21 days. Baseball's only big-league strike lasted 13 days in April 1972, and caused some regular-season games to be canceled. Both earlier strikes were over

"I wish I could share your optimism, Jim, but to me it all looks rather hopeless— the NFL will never settle this strike by fall!"

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financial benefits. This year the walkout stemmed from what the players call "freedom issues." They were demanding from their management what the courts and the Congress have declined to secure for them, namely the constitutional and statutory protections of the free enterprise system.

Traditionally there have been certain restraints on the players' enterprise, chief of them the Rozelle rule, named in honor of Pete Rozelle, the league commissioner. The Rozelle rule closed what would otherwise have been a loophole in management's tightly organized control: the option clause, stipulating that a player may "play out his option" by refusing to sign a new contract when his old one expires and working the option year at 90 percent of his previous year's pay. With no other restriction he would then have been free to join any other team that wished to hire him.

The Rozelle rule provided, however, that the team he left be compensated "equally," either with money or personnel or both. Rozelle, who was hired and is paid by the team owners, was to determine the compensation value, and there was no appeal from his decision. The players believe he has abused his power in the few option cases that have occurred by prescribing onerous compensation, thus discouraging teams from hiring a free-lancer, and rendering the option clause useless.

(The NFL rule's ancestor was baseball's reserve clause, which gives the player no option at all. The team that originally signs him has permanent control —it may assign his contract elsewhere, but there is no way he can terminate it short of retiring from baseball.)

Coupled with the foregoing is the fact that the collegian who majors in football does not send out resumés like any other graduate when he's ready to make his way in the real world. His place of employment has already been designated by a system known as the draft. This is the method by which professional teams avoid costly competition for available labor. By an orderly selection system they apportion the negotiating rights to graduating seniors to individual teams. The player has a choice of signing with that team or not playing professionally (except during occasional periods, such as this year, when a rival league springs up).

As a final form of control, the player can be sold or traded to another team, with the alternatives again of going where he's told or taking up another line of work. Team sports athletes are being dealt with more like pieces of chattel than citizens of the United States. In the case of the players, it took them a while to come around to that view, a while longer to accumulate the collective will to do something about it. It would be stretching a point to say that all the athletes perceive themselves as thus subjugated, but that perception was what prompted their collective effort this year. Ed Garvey, executive director of the players' union (National Football League Players Association), dates a definite awakening from Curt Flood's doomed lawsuit: "Flood did something—people started saying, 'Wait a minute, there's something wrong where we can be treated like a piece of property.' "

SUMMER SCHEDULE:

We will omit next week's issue, then resume regular publication

The opposition view rests on three premises: that pro athletes are paid well to surrender their freedom, that the leagues could not exist without the restrictive rules, that it's always been done that way.

Theodore Kheel, chief negotiator for the owners, and John Mackey, former president of the Players Association, debated the issue in a matched set of essays in *The New York Times* a few weeks ago. Kheel observed that if the players won their demands, "each year the players would sign with those teams offering the best deal," conveying the sense that he considered this a preposterous liberty for an individual whose services are for sale, and overlooking the possibilities for long-term contracts. Kheel also argued tradition—they've developed the system of handling players over a period of 50 years down on the old plantation. Besides, he said, what the union was advocating amounted to anarchy.

"I am appalled," Mackey countered, "that in the United States of America people can still make economic arguments to justify the taking away of a man's freedom and dignity . . . if freedom will destroy the NFL, then the NFL should be destroyed . . . Would it not be more efficient to draft and sell lawyers, doctors, teachers, electricians, plumbers, carpenters and engineers than to allow free market and free choice to determine where and for how much they will work?"

For some time now the four major sports have had unions of varying strength and vigor. According to "Government and the Sports Business," a report released in July by the Brookings Institution, the unions are only beginning to develop the power to bargain the changes they seek. Looking forward to the next contract negotiations between the baseball players' union and the owners in 1976, the report predicts the definitive test of sports labor's ability to reorder its status. As this is written movement toward accommodation had begun abruptly after a month of strike, preceded by half a year of sporadic negotiation. The contract that results will be a clear indication of the power—even more, of the determination—of a professional athletic union to acquire the rights of their fellow workers.

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Instability in the Mediterranean

The Cyprus Crisis

by Stanley Karnow

During a brief visit to Nicosia in the spring, Secretary of State Kissinger facetiously remarked to local reporters that despite his diplomatic triumphs in Vietnam and the Middle East he would never get caught in the Cyprus tangle. But last month, when the blundering Greek military junta that formerly ruled in Athens triggered an upheaval on the island, Kissinger could not escape entanglement. His handling of the looming crisis was less than brilliant, however. Although forewarned of the Greek plan to depose Archbishop Makarios, the president of Cyprus, he declined to exert the pressure that might have prevented the coup d'état. And although he later helped avert a direct conflict between Greece and Turkey, he was unable to dissuade the Turks from invading the island. His reluctance to bear down on the Athens dictatorship dramatized the degree to which the Nixon administration had become hostage to its Greek bases and to the Greek officer clique that permitted them. Moreover, by spurning State Department specialists far more familiar with the issue than himself, Kissinger revealed the flaws in his personal style of diplomacy, and at the same time underlined the urgent need to "institutionalize" foreign policy and practice what he pledged when he took office last fall.

The Cyprus snarl is consequently messier than it has been in a decade, and it is likely to menace the stability of the eastern Mediterranean for years to come. In the first place the conservative civilian government that has emerged in Athens cannot survive as long as Turkey keeps a considerable force on Cyprus designed to curb Greece's sway in the island's affairs. For the new Athens government under Constantine Karamanlis owes its existence to army generals who, if humiliated by a loss of Greek influence on Cyprus, may again bid for power and even seek a futile war with Turkey as a way of satisfying their nationalistic passions. Turkish Prime Minister Bulent Ecevit's left-of-center government is in a similar predicament. It also functions in the shadow of the army, which is determined to hold the positions it acquired after its landings on Cyprus. The tenuous cease-fire notwithstanding, both sides are therefore cool to a durable compromise, and their dispute has been exacerbated lately by a squabble over oil rights in the Aegean Sea. Continued tension within this southern flank of the North Atlantic Treaty Organization suits the Russians, who have edged closer to Turkey in an effort to squeeze the US out of the region. One result may be an intensified US drive for a stronger Mediterranean presence, and such a strategy, should it be set in motion, augurs an arms race in the area that would accelerate competition for nuclear superiority. Thus tiny Cyprus, intrinsically inconsequential, has been thrust by geography into a crucial international role.

Cyprus is vital to peace in that part of the globe, but the key to peace on the island itself is elusive. The 520,000 Cypriot Greeks and 120,000 Cypriot Turks push their quest for identity to xenophobic extremes. In 1959, after years of fighting between them, diplomatic intermediaries turned Cyprus into an independent hybrid state under the leadership of Makarios, who hoped to moderate its ethnic animosities. He sought to balance the island's internal rivalries and reduce its dependence on outside nations. Skilled as he was in Byzantine maneuvering, his zigzag tactics were not wholly successful. He had studied in Boston and he was loyal to the British Commonwealth, yet his neutralist attitude prompted US hardliners to dub him the "Castro of the Mediterranean." More critically, his affinity for the middle-of-the-road Cyprus Communist movement as well as his lack of enthusiasm for *enosis*, or union with Greece, earned him the opposition of the Athens junta and its agents on the island. Greek operatives attempted to kill him at least twice, and his special enemy, the lunatic guerrilla chief George Grivas, repeatedly tried to ignite civil wars against him. When Grivas died early this year, it was thought that Makarios might enjoy a respite. But the Greek regime commanded by Gen. Demetrios Ioannides, a veteran of the Cyprus strife, was apparently desperate.

Ioannides, a ruthless, puritanical bachelor, had helped Col. George Papadopoulos to set up a military cabinet in Athens in 1967. But last November, dissatisfied by Papadopoulos' faint liberalism, he unseated his boss and formed a more repressive junta. The Nixon administration, worried that an ultranationalist faction inside the Ioannides group might dismantle the US bases in Greece, chose to appease the new dictatorship, as it had earlier Greek autocrats. Hence America's Greek clients could manipulate their US patrons.

The American mission in Athens, managed by Ambassador Henry J. Tasca, had long worked closely with its US military and Central Intelligence Agency staff to coddle the Greek oligarchy. According to a

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confidential congressional report issued in 1971, Tasca and his aides regularly entertained Greek officials and businessmen aboard US warships, and among other gestures mobilized American school children in Athens to sing Christmas carols for the prime minister. Tasca also tailored embassy dispatches that were unkind to the Greek generals, and advised Washington instead that the junta was well on its way toward establishing "a constitutional order." If these phony accounts shattered the morale of US foreign service officers who knew the truth, Tasca was merely telling the White House what it wanted to hear. For the administration had laid down the line that the Greek tyranny not only be tolerated but extolled, because it "offers strategic advantages to the NATO alliance and to the US which are of great importance to the security of the West."

Late last year, however, it became plain that US aid did not buy the Athens junta's obedience. During the Yom Kippur war, for example, the Greek regime permitted the Russians to fly over Greece en route to Egypt, while denying the same right to American aircraft headed for Israel. Soon afterward, in a transparent attempt to obtain more American military assistance, the junta dug in its heels when the Pentagon asked for new naval facilities. Defense Secretary James Schlesinger then issued a rare critical statement of the regime, and one US official who visited Athens perceived that even Ambassador Tasca was showing signs of disillusionment. In an unusually prescient study published after a trip to Greece in January, Rep. Donald Fraser of Minnesota and an aide, Clifford Hackett, predicted that the Ioannides regime "cannot long endure." They pointed out that the junta, plagued by the highest inflation rate in Europe, faced internal dissension, and they recommended that the administration lean on the regime to reform even at the risk of jeopardizing the US bases in Greece.

Perhaps President Nixon was wallowing too deeply in Watergate to heed these warnings, and Kissinger was too preoccupied with the Middle East and the forthcoming Moscow summit to concentrate on an area that he had always considered peripheral. In addition the Greek, Turkish and Cyprus desks of the State Department were then being shifted out of the Near Eastern to the European bureau, and the change placed them under senior officials unacquainted with the region. So the upper echelons of the foreign policy apparatus in Washington were not clearly attending to that part of the world, and failed to discern a crisis in the making. Afterward, striving to deny any miscalculation, Kissinger would say that the coup even took Makarios "by surprise" because information "was not exactly lying in the street." The evidence overwhelmingly suggests, however, that Makarios was not only aware of the danger confronting him, but that Kissinger himself had been alerted in ample time to act more forcefully than he did.

An early hint that Ioannides intended to undermine Makarios was reflected in the fact that a Maj. Karousos, who had been sent to Cyprus by Athens to replace Grivas as head of the Greek terrorist organization known as EOKA-B, was dismissed when he attempted instead to dissolve the insurgent group. After that the terrorists began to surface boldly, and on July 2 Makarios complained to Phaedon Gizikis, the figurehead president of Greece, that the 650 Greek officers commanding the Greek Cypriot National Guard were conspiring with the terrorists to topple him. Makarios demanded that the officers be recalled. In a gesture designed to retain ties with Athens, he requested 100 new Greek officers to help in "restructuring" the Cyprus armed forces. Makarios published this complaint, and he also authorized the Nicosia newspaper *Apogematini* to publish the details of a plot against him to be staged by the national guard and the terrorists. The newspaper's disclosure, which appeared on July 5, said that the rebels would assassinate Makarios and install a "puppet" leader—which is almost precisely what occurred 10 days later.

Makarios faced the potential coup calmly, evidently believing that notice of its imminence would alarm the world and block the Greek junta's project. But he underestimated the world's interest in him, and he misjudged his foes. The junta, undeterred by the publicity, bolstered its elements on Cyprus with 200 officers in mufti. On July 12 the Greek Cypriot National Guard commander, Gen. George Denizis, met with Ioannides in Athens to put final touches on plans for the coup, which would unfold three days later. At this stage the plan was so well known that the Greek Foreign Minister, Spyridon Tetenes, two of his aides and 22 Greek army officers resigned in protest against it. Kissinger's assertion to the contrary, the plan was also known in Washington.

As early as the last week in June, while President Nixon and Kissinger were in Moscow, a CIA agent in Athens was asked by Ioannides to sound out Washington's attitude toward a possible coup against Makarios. Ambassador Tasca was promptly told by Washington to advise the Greek general to "cease and desist" from any violence, and that message, sent on June 29, was followed by at least three others repeating the same instructions. Tasca answered each with the assurance that the Greeks had been so informed. But the enigmatic Ioannides, whom Tasca rarely if ever saw, apparently never signaled his intentions clearly. In view of the ambassador's sympathies, doubt is now being expressed that Tasca fully conveyed Washington's word to the junta. It seems to me that this retrospective attempt to blame him is misplaced. For if the State Department distrusted the ambassador's ability to discourage Ioannides, it could have easily sent a special envoy to Athens—as Kissinger did later when he dispatched Undersecretary

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of State Joseph Sisco to the scene. The conclusion to be drawn from this halfhearted effort to avert the coup against Makarios is that Kissinger was either too busy or too complacent to act decisively.

Kissinger also waffled after the coup occurred on July 15, and his hesitation touched off a bitter debate within the State Department bureaucracy. Officers at the working level contended that the Greek junta was too fragile to withstand firm pressure and could be compelled by the US to restore Makarios to power. They pointed out that the British as well as the entire NATO alliance were voicing strong support for Makarios. They cautioned, quite rightly as it turned out, that the Turks would not tolerate Greek domination of Cyprus. These State Department officers were backed up by their Pentagon colleagues, who feared that the US would be isolated in NATO and might also be confronted by a war between Greece and Turkey that would benefit the Soviet Union. Defense Department civilians were anxious to squash the notion that the Pentagon was totally committed to the junta.

Kissinger rejected these arguments. He estimated that Makarios, who had barely missed assassination, was "politically dead." Moreover he was confident that he could cool off the Turks without annoying the Athens junta and running the risk of losing the Greek bases. His approach, accordingly, was to move slowly and prudently, and it was mirrored in the comments of Robert Anderson, the State Department spokesman. Anderson carefully refrained from pinning responsibility for the coup on the Greek regime, instead urging all parties in the situation to exercise "restraint." At the United Nations, meanwhile, the US would accept only the most innocuous resolutions. All these tactics aroused suspicion that the US was stalling in order to allow the Greeks to consolidate Cyprus, and this angered the Turks.

On July 17 Kissinger sent Sisco off on a diplomatic shuttle with three obectives—to gain a cease-fire on Cyprus, to prevent a Turkish invasion of the island, and to avert a war between Turkey and Greece. Sisco achieved the last objective by warning the Greeks that the US would do nothing to defend them should their Bulgarian neighbors occupy parts of their territory during a conflict with Turkey. But he could not stop the hostilities on Cyprus, and more significantly, he failed to block the Turkish move onto the island.

Turkish relations with the US had been strained even before the Cyprus coup because of the Ankara government's decision to resume Turkey's cultivation of opium poppies. Kissinger's bland reaction to the coup further irritated the Turks, and within a day after Makarios fell they indicated their intention of invading the island in order, as they put it, to restore its "political and military balance." A Turkish thrust was initially seen in Washington as a bluff, since similar armadas had set forth for Cyprus in 1964 and 1967, only to be halted by US pressure. On the latter occasion President Lyndon Johnson dampened the Turks' ardor by threatening to leave them exposed to Soviet reprisals. This time, however, circumstances were different in two important respects. Makarios was no longer on Cyprus, and without him the Turks felt that their own presence on the island was imperative. Moreover the Russians were now sympathetic to Turkish aims, which appeared to them to offer the best hedge against the possibility of a Greek-controlled Cyprus falling into the NATO orbit. Sisco's journey to Ankara was therefore fruitless. He pleaded with Prime Minister Ecevit through the early hours of the morning, only to discover afterward that the Turkish fleet had been launched.

Within a week after the coup Sisco's only major accomplishment was that war had been avoided between Greece and Turkey. Cyprus was being devastated. The Turkish implantation there seemed to guarantee not only further bloodshed but endless wrangling over the island's future status. Amid this gloom, rumors started to circulate that the Athens junta was in jeopardy. At first, Kissinger reportedly feared that Ioannides, who was bad enough, might be overthrown by the so-called Qaddafists, a cabal of extremely nationalistic Greek captains and majors who claim to be inspired by Libya's ascetic President Muammar El-Qaddafi. Such a development, every Washington expert believed, would have been a nightmare for Greece. Whether the CIA had a hand in heading off this alternative is beyond me, but I find it somewhat strange that Kissinger, before any reports of any incident in Athens had appeared, should have announced at a news conference on July 22 that "there may be a coup in Greece at the moment . . . and we can't form any clear judgment as to the complexion of the forces that will take over the government." The mystery was compounded when the transcript of Kissinger's statement was later softened to read "*might* take over the government." In any case the coup did take place under the auspices of Gen. Ioannis Davos, commander of the Third Army Corps in northern Greece, and Karamanlis returned to Athens from more than a decade of exile to give the Greeks their first civilized government since 1967.

But for a new government to hold on in Athens in the wake of a still unresolved Cyprus crisis is tricky. The generals who propelled Karamanlis into power are waiting in the wings, and unless he can settle the conflict in Greece's favor, they may dump him just as they have ousted other civilian politicians in the past. It seems unlikely that the Turks will agree to concessions that dilute their authority on the island. Thus the Cyprus dilemma may be now no closer to a solution. The US is lucky, however, to have lost its primitive Greek protegés; that in itself is progress even if, measuring the distance yet to go, real stability in the Mediterranean may be far off.

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Stanley Kauffmann on films

"The World's Most Popular Actor"

How many readers of *TNR* have lately seen a roller derby? Or a stock car race? Or a Charles Bronson film? No matter how ecumenical our tastes, we all have to select, if only because of time pressure, and we forget that on the other side of a very thin wall are a lot of other tracks, utterly strange to us, teeming with millions. The other day I got jarred by a one-two punch on this subject. In one day I saw two new Bronson films. Actually I had seen him several times before and had some idea of his appeal and his success, but the mere fact that there were two of his new products ready at once, with the careful tooling of each item to please an evidently precisely demanding public, socked home the realization that, though I was aware of Bronson, I hadn't really appreciated his status.

Bronson is an American, of Russian-Lithuanian family, now in his 50s, who once was a coalminer and who began appearing in American films over 20 years ago, mostly playing Indians and minor heavies. Like Clint Eastwood, who is younger, Bronson never had real success until he went to Europe in 1968. Then he hit, and hit big: in one year he became a star. He has since ground out films, spaghetti Westerns, gangster films and much besides, in Italy, Spain, France and Turkey. He is an action-violence king. Those who are continually prattling about the "American" disease of violence might note that Bronson last year was given the Golden Globe award as "the world's most popular actor," an award based on a survey made by Reuters in 60 countries. (Now you see what I mean by stratification. Suppose you had been asked to pick the world's most popular actor. Would it have been Bronson?)

I like him. He has a strong Slavic face, invisible slit eyes, a gently menacing smile—something like Jack Palance but more human, less humanoid. He is smaller than Palance—medium height, neatly knit. Unlike Palance, unlike Eastwood, there is something humorous about him, something faintly self-mocking that is laid in nicely by himself and by his custom-tailor scriptwriters, just enough to keep him from being a comic-strip superman without sapping the excitement of his muscle stuff. (See his first encounter with a Mafia killer in *Mr. Majestyk* or the very last shot of *Death Wish*.) His face is now wrinkled, his mandarin mustache now droops past the corners of a slightly sagging mouth; in one of these new films, he is even the father of a married daughter. He is a middle-aged action star, still a sex object. He has come back to America, where (again like Eastwood) he is once again based, as a mature *macho*, taciturn, taut, amused, self-confident.

To like Bronson, however, is not necessarily to like his films. They are yard-goods that "become" him, snipped and stitched and fitted. His fans apparently want to see him in new films so long as they aren't very different from the old ones—the sure sign of the film star as against leading actor. Both of these new films, both made in the US, start with some grain of seriousness, which apparently is part of the formula, then go on to become Bronson vehicles. In *Mr. Majestyk* (United Artists) he is a Colorado melon-grower, a Korean veteran 20 years later. He hires some Chicano migrants to help him harvest and gets trouble from a local racist labor racketeer. It looks as if this is going to be an action picture about labor and race troubles. But the script goes nuts. Bronson is sent to jail on a complaint by the racist, and there he gets entangled with the Mafia. The Mafia story gets mixed with the melon story, and takes over. At the end of the picture there are a dozen or so men making complicated quasi-military plans to "hit" Bronson. Ridiculous. I could have told them how to do it much more simply. But that would have wiped out Bronson, along with his chance to beat the whole gang to a frazzle singlehandedly. What I liked best about this trash is that Bronson begins each action sequence like Nureyev beginning a difficult solo. This is what he *does*.

Death Wish (Paramount) is slightly more intelligent and much more insidious. Here Bronson, again a Korean vet, is a development engineer for a big construction corporation in New York. One day while he's at work, three goons invade his Riverside Drive apartment and attack his wife and daughter: the wife dies as a result, the daughter (married) is reduced to catatonia. Soon afterward Bronson goes to Arizona on business, gets the gun code of the Old West imprinted on his mind, and is given a pistol as a present. Back in New York he carries the pistol, and kills a mugger who molests him. The first one is the hardest; then he discovers he likes it. He begins deliberately to tempt muggers so that he can kill them. The police can't find him. He becomes a national (unidentified) figure—The Vigilante. Authorities are worried sick about the example he is setting, and they carefully conceal the fact that the mugging rate has dropped drastically! At last the cops find him, and a workable compromise is reached.

Both of these scripts—one implicitly, one knowingly—deal with lynch law, one of the oldest ethical modes of American film (and popular fiction). The physical size of America, the conservative tradition of self-reliance and of asking the state for as little as possible, made such a tradition inevitable—in reality to some degree and in fantasy to an enormous degree. The lone cowboy whose friend was killed couldn't phone the sheriff. This led to the cowboy who would have felt it cowardly to get the sheriff even when there was a phone; it also led to the private eye and the private vindicator, the figure who moved on the belief that only a defective male would ask for governmental help when he was in trouble or was wronged. And all this has been abetted of course by the deepening picture—not entirely fictional—of police inefficiency and corruption.

(continued on page 33)

Films Worth Seeing

Chinatown. The subject *and* the style are Hollywood '30s. Roman Polanski's *Maltese Falcon*, too aware of it and too long, but exceptional.

Going Places. Outrage as linguistics. French youth of the '70s. Well made, sexy, scary, funny, valid.

The Seduction of Mimi. Mimi is a he; Lina Wertmuller, the director-writer, is Italian. Fine stylized leading performance by Giancarlo Giannini in a comic ragout of politics-crime-sex.

Wedding in Blood. Claude Chabrol directs with velvet glove but writes with iron fist. Trite marital transgression-and-murder story, superbly done.

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Justice in High Places

In a television interview after the 1962 missile crisis, President Kennedy explained that an American quarantine of Cuba was justified because installment of the Russian missiles would have changed the balance of power. He acknowledged that the mere presence of the missiles, in and of themselves, would not have necessarily threatened America's security. But, according to Kennedy, "it would have appeared to, and appearances contribute to reality."

The Appearance of Justice
by John MacKenzie
(Scribners; $7.95)

Judges
by Donald Dale Jackson
(Atheneum; $10)

Justices and Presidents
by Henry J. Abraham
(Oxford University Press; $10)

If appearances are important to a President executing his responsibilities as commander-in-chief of the armed forces, they are equally important to courts fulfilling their obligation to dispense justice. In his book, *The Appearance of Justice*, John MacKenzie argues forcefully that the moral authority and credibility of our judicial system requires not only that courts act impartially but also that they *appear* to act impartially: "The appearance of partiality, whether based on the judge's apparent economic self-interest, his class or race prejudices, or simple carelessness about the concerns of citizens and the public, is the greatest threat that confronts our judges."

Having identified the threat, MacKenzie explores its history and its present dimensions for the federal judiciary. In so doing he reveals the impressive skills and knowledge acquired from being *The Washington Post*'s Supreme Court reporter. Well written, incisive and supported by considerable research (although, unfortunately, the book lacks citations to references), the book's analysis is timely: recent opinion polls indicate that only a third of the public has confidence in the federal judicial system (less confidence than is reposed in garbagemen).

The appearance of justice has been a public concern ever since John Jay, the nation's first Supreme Court chief justice, agreed to represent President Washington in sensitive negotiations with England. Many believed it unseemly for a jurist to undertake tasks whose lawfulness he might later be asked to judge. But, as MacKenzie documents, Jay's experience has not been an uncommon one in the annals of the federal judiciary. Judges all too often participate in extracurricular activities that raise doubts about their ability to remain neutral arbiters of controversy.

A recent example: Abe Fortas, a brilliant lawyer who continued to advise President Johnson on the Vietnam war after LBJ had appointed him to the Supreme Court. There is some dispute as to whether a Supreme Court justice should have acted in that advisory capacity. But there is virtually no dispute that Fortas compromised the appearance of justice when he later voted in cases challenging the legality of Johnson's war policies.

The Fortas case is only one of the better known incidents of judicial impropriety. MacKenzie amply demonstrates that such improprieties occur at all levels of the federal bench. All too often the cause of the impropriety is money. In case after case MacKenzie shows the willingness of federal judges to decide controversies that could materially affect their personal financial interests (such as the fifth circuit judge who saw nothing wrong in deciding an important gas rate case merely because his wife owned a "few" shares of gas company stocks—which, upon later investigation, were valued at $500,000).

MacKenzie traces the legal profession's efforts to minimize the incidence of judicial impropriety by adopting a code of ethics for judges. In MacKenzie's view, though, the code—adopted by the American Bar Association in 1972—is unable to solve the problem alone. He cites a code section that provides that a judge formerly employed by a governmental agency "should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association." Despite that clear language, Supreme Court Justice William Rehnquist decided a case concerning military spying that he had previously commented on as an assistant attorney general in the Justice Department.

MacKenzie believes that the appearance of justice can be secured only if Congress enacts appropriate legislation. Such a law should, at a minimum, require disclosure of a judge's financial interests, limit his extracurricular activities, and require his disqualification from a case in which his interests may be affected.

However appealing these proposed reforms, they might not ensure the appearance of justice. For the public's perception of the judiciary is not molded solely by the behavior of individual judges; it is shaped also by Presidents and other politicians who persuade the public that judges are too permissive with criminals, too willing to order busing, too willing to serve their personal interests and, well, too much like politicians. Unless reform accounts for the effect of such public commentary, the appearance of justice may continue to be an elusive quality.

If there are difficulties in drafting reforms to make the appearance of justice pure, Donald Dale Jackson shows in *Judges* that it is, in large part, because judges themselves are not pure. In this book Jackson, a former reporter for *Life* magazine, takes the reader on a rich and colorful journey across America's judicial landscape. After interviewing and observing hundreds of judges—from a justice of the peace in West Virginia to the nine justices on the US Supreme Court—Jackson finds that justice often suffers from the same foibles that are endemic to human nature:

> *Judges are not, as many believe, impartial umpires who hand down decisions in accordance with clear and unwavering rules . . . Judges are no more and no less human, struggling with their own imperfections and those of others, and their human reactions have as profound an influence on their decisions as the law they are sworn to serve.*

One of the greatest obstacles to justice, according to Jackson, is the arrogance that too frequently infests the bench. Because all judges wield almost dictatorial power in their own courtrooms, much deference is paid to them. The result is that many judges believe they are a cut above other human beings. A municipal judge in Texas commented, "It's hard not to get the feeling that your ass is the divinity if it's been gettin' kissed for twenty years."

Predictably such arrogance tends to blind a judge to his own prejudices

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and faults. The problem is particularly acute in matters concerning civil rights. Some judges spearheaded the attack on discrimination against America's oppressed minorities; yet the judiciary itself remains a relatively segregated profession. Less than two percent of the nation's 16,700 judges are black (with not one black federal judge in the South), and the record is even more dismal for Chicanos, Indians and other ethnic minorities. Some of this institutionalized racism taints the behavior of individual judges. Confronted with the suggestion of racial bigotry in his court, one California judge said vehemently: "I don't have anything against the black bastards—even though they lie and steal all the time."

But Jackson points out that many judges do execute their responsibilities with dignity and compassion for the people whose fates the court must decide (although even diligence and compassion may not spare a judge the agony of sending a convicted individual to a prison that can neither rehabilitate him nor deter other crimes).

The principal problem, however, is that the methods of selection for judges generally do not ensure excellence on the bench (Jackson estimates that 40 percent of the state judges and 10 percent of the federal judges are unqualified). Popular election and appointment by a government executive—the two most common methods of judicial selection—tend to turn on extraneous political factors instead of the qualities that the judge will bring to the bench—which may explain why Nixon thought he could get away with appointing a Clement Haynsworth or Harrold Carswell to the Supreme Court.

Jackson offers few solutions. He concedes the problem is thorny, then lamely suggests that perhaps the only answer is to maximize the number of participants in the selection process—apparently in the hope that the prejudices and errors of numerous selectors will cancel each other out and thereby enhance the quality of judges ultimately chosen.

Jackson's failure to formulate a detailed proposal for judicial selection reflects a more general shortcoming of his book: there is virtually no discussion of procedural reforms to limit the impact of a judge's human foibles on the realities of justice. Consideration of such reforms is obviously important; otherwise justice—like any other product—will continue to be no better than the people who make it.

At a time when all good liberals are contemplating the regicide of Richard Nixon, it may be worthwhile to recall those more innocent days in 1968 when some liberals saw no real difference between candidate Nixon and Hubert Humphrey (whose liberal armor had been stained by an association with LBJ's war policies). But in 1968 all should have perceived at least one critical difference between the presidential candidates: the individuals whom they would appoint to the Supreme Court.

Nixon has had four opportunities to fill Court vacancies, and, given the ill health and advancing age of some of the sitting justices, he may have still more opportunities. Each of Nixon's appointments was made with an eye toward remaking the Court in his image. And until the most recent decision on the tapes, this presidential purpose seemed to have been satisfied. With few exceptions (notably in abortion and wiretapping), the Nixon justices tended to exalt governmental power and business interests at the expense of individual liberty and consumer rights.

Henry J. Abraham, a history professor at the University of Virginia, has written a scholarly book, *Justices and Presidents;* to him the politicization of presidential appointments to the Supreme Court is nothing new. The Court is, after all, a political institution. It breathes life into abstract legal principles. In so doing it often shapes national policies. School busing is but one obvious example. Watergate will probably prove to be another.

Since the Court is a prime political force in national life, it is, to Abraham, quite natural that the selection of justices should assume all the attributes of a political process. In support of this proposition Abraham reviews the criteria that our 37 Presidents have applied in making 126 nominations (100 of whom were confirmed by the Senate). Although the criteria have varied from President to President, one guideline seems almost universal: the President's political compatibility with the nominee. In virtually every case the President nominated someone—whether a friend, a former political colleague, or a stranger representing some ethnic group—whose political philosophy coincided with the President's. This leads Abraham to comment that "every President who has made nominations to the Supreme Court has been guilty of Court-packing in some measure."

Some simple statistics: approximately 90 percent of the nominees belonged to the President's political party. All but one of the 100 nominees confirmed by the Senate "had engaged in at least some public service at various levels of government or had actively participated in political enterprises." And in 42 cases the nominee had no prior judicial experience (Justice Felix Frankfurter asserted that the "correlation between prior judicial experience and fitness for the Supreme Court is zero"—and Frankfurter himself had no prior judicial experience before his appointment).

Political scheming has frequently backfired however. Theodore Roosevelt was bitterly disappointed by his appointment of Oliver Wendell Holmes because the Boston brahmin voted against Roosevelt's antitrust policies; the vote caused Roosevelt to explode, "I could carve out of a banana a judge with more backbone." Woodrow Wilson experienced similar frustrations after he appointed James McReynolds. A reactionary justice of limited abilities, McReynolds not only voted against Wilson's progressive legislation; he also displayed an anti-Semitism that proved embarrassing to Wilson as well as to the Court. McReynolds refused to sit next

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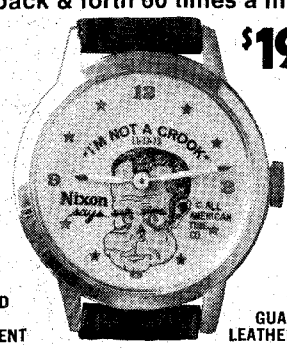

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to or speak with Louis Brandeis, another Wilson appointee, because he was Jewish. Dwight Eisenhower lived to regret some Court appointments. Anxious to restore a Court committed to a philosophy of judicial restraint, he nominated, among others, Earl Warren and William Brennan, two men who spearheaded the Court's activist concern for civil liberties and civil rights in the 1950s and 1960s. Asked if he ever made any mistakes as President, Eisenhower replied: "Yes, two, and they are both sitting on the Supreme Court."

Despite the political underpinnings of Court appointments, the selection process has worked relatively well. Most of the 100 justices who have graced and do grace our supreme tribunal have been men (no women were nominated) of good character and excellent legal skills.

But Abraham somewhat mysteriously laments a growing tendency to have the Court resolve public issues. No statistics or other facts are offered to demonstrate that the Court is being asked to play a larger role today in the resolution of public issues. Even if it were, the question remains why there should be any concern. The Court is not shown to have abused its powers in the past; and in any event, as Abraham himself acknowledges, Congress would still retain the power to modify or repeal Court decisions.

The weakness of Abraham's conclusion here underlies a more basic shortcoming of his book: a failure to provide an in-depth analysis of the Court's impact on national politics. Often the review of Court history is quite curt. Justice Nathan Clifford's 23 years on the bench are summarized in one sentence. Nor is there any discussion of whether reforms are needed to make the Court more politically responsive and responsible in the future. Abraham's book—although thorough in many respects—is more history as description than history as a guide for decision.

Lewis J. Paper

LEWIS J. PAPER *is an attorney who has practiced law in Washington, DC where he is now legislative counsel to a US senator.*

COMING

Joseph Featherstone
reviews
James Coleman's
Youth: Adulthood in Transition

Selma Revisited

Selma 1965
by Charles E. Fager

(Scribners; $7.95)

The subtitle of Charles Fager's *Selma 1965* is "The March That Changed the South," a poor choice. Momentous as it was, the Selma-to-Montgomery march was the conclusion of an awesome series of events that occurred throughout the preceding decade. Perhaps, as Fager implies and others have argued, the murder of Mrs. Viola Liuzzo was the last signal to Lyndon Johnson that it was time to put his muscle behind new legislation. Media coverage of the march had a contagious effect, and the nation was largely supportive of the Voting Rights Act passed later that year. The Selma campaign succeeded as a political gesture not simply because of the white backlash (that confirmed the darkest fears of Americans outside the South) but because by then tragedy was so familiar. Too much had happened *before* Selma to allow another one.

To examine Selma as an isolated historical event is to ignore the crucial events that helped create it. One example will, I believe, illustrate the book's need for a broader historical framework.

Johnson's sympathies for the black struggle in the South had been dramatized by his powerful pressure for passage of the 1964 Civil Rights Bill. But Johnson was a politician of excessive drives, not at all beneath maneuvering at the expense of people who needed help. As Fager explains:

> *. . . the President understood that the civil rights leaders' charges of mass disenfranchisement in the Deep South were not exaggerated. And he was prepared, in his own good time, to do something about it: even before the 1964 election, he directed Deputy Attorney General Nicholas Katzenbach, who was to succeed Robert Kennedy as head of the Justice Department a few months later, to begin work on a bill designed to put a stop to literacy test discrimination. But he ordered Katzenbach to keep the project a secret, in order to avoid giving Republican presidential nominee Senator Barry Goldwater any further ammunition in wooing southern white votes, and to permit the president to maintain his freedom of timing on its submission.*

What Fager does not explain is that by the time of his nomination in 1964 Johnson knew that his days to "maintain a freedom of timing" were numbered. A delegation of Mississippi sharecroppers, organized by SNCC workers during the historic Freedom Summer, arrived in Atlantic City to challenge the credentials of Eastland, Stennis and the old-line white Democratic party of the state. The Freedom Democratic party had done its homework, too, having opened an office in Washington earlier in 1964 and solidified ties with labor leaders and liberal congressmen. During the credentials hearings a Delta cottonpicker named Fannie Lou Hamer gave an impassioned speech about the brutal consequences of life in Sen. Eastland's Sunflower County, which was 72 percent black. Telegrams immediately poured into Atlantic City demanding that the regular Mississippi Democrats be replaced by the FDP. The President was in Washington waiting for routine convention business to conclude so that he could fly in to accept the nomination.

Within minutes of Mrs. Hamer's in-

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spiring speech, Johnson went before hastily convened network cameras in a pathetic attempt to save face, announcing his renewed support of the black struggle. Privately, however, the President would have no part in unseating Eastland and Stennis. Characteristic of Johnson's manipulation of those beneath him, he designated Hubert Humphrey, an early FDP supporter and Johnson's rumored choice for Vice President, to deliver the "compromise." Two FDP members were offered seats as at-large candidates. When the FDP held fast to ideological commitments and rejected the offer, Johnson suffered a public embarrassment he did not soon forget. It was a major lesson in his education on civil rights politics.

Philosophically Johnson understood and believed in the movement; but he also knew that he was dealing with a political force that had the nation's sympathies and was destined to succeed. In *Selma 1965* the FDP is mentioned but twice, in reference to certain people connected with it. Nor is there discussion of the similar group in Alabama, a black challenge contingent led by John Cashin that is still struggling against the Wallace Machine, and which progressed as a result of the Selma movement.

While noticeably lacking in historical footing, *Selma 1965* is nevertheless a solid interpretation of the people, the town and the many conflicting forces. Fager's account of the movement's growth in Selma is sound, if predictable. (The author was a participant in the march.) Unlike many activist diaries of the '60s that portray Negroes and Southern whites engaged in Manichean conflicts, Fager is commendably fair to both sides. His treatment of the white community is nothing short of brilliant. He traces the tradition of white politics in the Alabama River town, which is somewhat moderate for Alabama. He offers a lucid analysis of the power struggle between the white law enforcement officials, Jim Clark, the sheriff and Wilson Baker, the public safety director who opposed Clark's sadistic tactics. Though a segregationist himself, Baker was not obsessed with power; he tried, unsuccessfully, to prevent violence. Baker defeated Clark in the election after the march with strong backing of the newly enfranchised Negro voters. Baker is sheriff of Dallas County today, and judging from Fager's description, a man of moderation who has continued to change with the times.

It is heartening to read a book that gives such excellent descriptions of the little people in Selma who defied the century of savage logic in the region's history by joining the march. And if you know anything about the period, there are those sudden, tearing evocations of heart and memory when the author introduces a person who in a few pages will die.

Selma 1965 is not a great book, but it is a reasonably good one, and certainly a worthwhile addition to the thin library of civil rights history.

Jason Berry

JASON BERRY *was Charles Evers' press secretary in the 1971 Mississippi governor's race. His book,* Amazing Grace: With Charles Evers in Mississippi *(Saturday Review Press) is an account of that campaign and the changing politics of the state.*

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Recent, Notable Fiction

The War Between the Tates by Alison Lurie

(Random House; $6.95)

I imagine Alison Lurie puts on surgical gloves before sitting down at the keyboard of her typewriter. She comes equipped with scalpel, hemostat, forceps, rongeurs. She operates on her characters. Their hopes, illusions, pretensions and rationalizations are tumors to be removed. Whether, after the operation, they will recover or relapse is generally left to the reader to decide. In her four previous novels—*Love and Friendship, The Nowhere City, Imaginary Friends, Real People*—she seems to have wearied of her elegant work and to have gone home before the anesthetic wore off. *The War Between the Tates* is no exception.

Brian Tate is a five-foot-five, 46-year-old professor of political science at Corinth University in upstate New York,

> *according to local criteria a success. His students think him interesting and well informed. His colleagues think him competent and fortunate; many of them envy him. He holds an endowed chair in the department and is the author of two scholarly studies in his field and a widely used and profitable text; he has a beautiful intelligent wife, two attractive and intelligent children, and a desirable house in Glenview Heights. They are not aware that internally, secretly, he is a dissatisfied and disappointed man. He bears the signs openly: a sharp W-shaped frown between his neat dark eyebrows, a pinched look around the mouth. But those who see these signs assume Brian is disappointed not by his own condition, but by the condition of the world.*

Erica Tate is a 39-year-old housewife and mother, the author and illustrator of three children's books concerning the adventures of an ostrich named Sanford. In the Tate marriage the children are Erica's "separate sphere of influence" and as the novel opens she seems unable to contain the aggressions of their adolescence. Far from finding them attractive and intelligent, she regards them as "monstrous lodgers," insupportably rude. She is also depressed by bulldozers and housing developments in Glenview Heights. Only the thought of Brian, handsome, reliable, successful, cheers her.

Brian will enter into adulterous relations with a graduate student in social psychology named Wendy, because he is five-foot-five and because he is not Henry Kissinger and because Wendy wants "to give myself to you com-

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pletely." ("And Brian would look across the table—or across the bed—at his wife, who had never given herself completely to anyone; who merely lent herself. Graciously and sometimes even enthusiastically, yes. But like an expensive library book, Erica had to be used with care and returned on time in perfect condition.") Erica will discover the affair. Brian will promise to end it. Brian, instead, will impregnate Wendy not once but twice. Erica will throw Brian out of the house, take Wendy in for a time, then have an affair of her own with Zed, who runs an occult bookstore and who used to be called Sanford Finkelstein when he and Erica were young, which is where Erica got the name for her ostrich. Zed will prove to be impotent. Wendy will run off with someone her own age. Brian and Erica will reach an accommodation that more closely resembles a second mortgage than it does a second try at emotional commitment.

Now there are a great many pleasures to be found in *The War Between the Tates*. There is, for one thing, the faultless prose, like an English lawn. One could play polo on such prose, swatting ideas with a mallet up and down the pastoral field. There are brilliant scenes, dozens of them—Brian putting stones on top of his garbage cans at night, spying his wife through the window as she sews, resenting her injured feelings; Erica trying LSD for the first time; Brian in a New York art gallery waiting for Wendy and an arranged abortion, contemplating the styles of the Old Masters; Erica discovering "an old woman's face, blank, white, creased" in her mirror; Brian being held hostage in his office by enraged feminists, etc. After the horses have galloped through each scene, Alison Lurie slips back on the lawn, tamps down the divots, smoothes the way for the next chukker.

There is, as we've come to expect from a Lurie novel, a detachment so profound that we might be looking at tropical fish in a tank instead of people in extremis; an irony so heightened that we're embarrassed for her characters and for ourselves; a comedy so grey that it tickles the frontal lobes while chilling the gut. On her turf—the evasions and self-deceptions of our upper middle classes, the strangled cries of artists and academicians—she is masterful and savage. She bends conventional narrative techniques to her scourging purpose; it is surprising that they do not break, that her well made novels can support so much disdain.

And yet *The War Between the Tates* is an annoying book. Alison Lurie is punishing the Tates for their having thought themselves better than other people, "exceptionally handsome, intelligent, righteous, and successful young people." They end up the novel "ugly, foolish, guilty, and dying." Then why was it necessary to drag in the Vietnam war? Analogies between that war and the war between husbands and wives drag through the pages; the metaphor weighs a ton. Containment, escalation, guerrilla warfare, hostages are not so much alluded to as forced down the reader's throat. Even the rapprochement of Erica and Brian is made to occur at a peace demonstration. Yes, adultery is *the* obsession of American novelists, and maybe it has something to do with our finding out that we aren't the perfect children of the Enlightenment that we believed ourselves to be, but, no, our foreign policy is not an extension of our boredom in the bedroom or our loathing of teenaged ingrates or our self-righteousness about marriage vows.

More significantly *The War Between the Tates* is populated by people who are never permitted to experience their own possibilities, cerebral or visceral. Alison Lurie's clamp is on them. Must Wendy be quite so mindless, such a sloppy caricature of the Now Generation? She is, after all, a graduate student at a major American university; she couldn't be as stupid as she is portrayed, giving off such feeble impersonations of Earth Motherhood and like-wowisms. Zed seeks truth, collects fads, is ordained to be impotent, fails to convince, never transcends his didactic conception. Seldom have children been so relentlessly obnoxious as Jeremy and Matilda, without a spark of human warmth. Brian, were the author to allow it, could plausibly have been in more pain, might even have known something of ecstasy, could and should have been more interesting. Not allowed. Erica must walk through the book with iron snow-shoes strapped to her feet and her mind. Finally having so severely limited her characters, Alison Lurie seems contemptuous of them. But it is not their fault that they are limited; it is hers.

In their different ways John Cheever and John Updike have covered this turf, too: Updike seeking some lyrical equivalent of the joy of discovery and the pain of betrayal, Cheever finding even in our failures a redeeming humanity, sorrow instead of disgust. Alison Lurie refuses to sympathize, and so this marvelously polished, splendidly crafted novel creates an antiseptic space in the mind: no one can live there.

John Leonard

John Leonard is the editor of The New York Times Book Review *and author of* Black Conceit, *a novel nominated for the National Book Award, 1973.*

The Designated Heir by Maxine Kumin

(Viking; $6.95)

Maxine Kumin is a woman who writes like some male writers, specifically like Erich Segal, author of the novel *Love Story*, which was an earlier and highly successful variation on Kumin's theme of love, domesticity and money. Her plot is simple: Can Robin Parks, a high-born Bostonian and the "designated heir" of the title, find happiness with Jeffrey Rabinowitz, a nice Jewish boy from East 62nd Street? The answer is not absolutely certain, although a probable "yes" seems safe. After all "you don't need a yarmulka on East Sixty-second Street," as Jeffrey's mother says.

Jeffrey and Robin do have their problems of course. The path of true love never did run smooth, as Robin somehow fails to observe. Her widowed mother is an alcoholic who makes a lifelong pilgrimage from sanitarium to sanitarium with her nurse-lover. ("Some day you'll understand how it happens," mother tells daughter when she is caught in the act. "In the sans [sic] that way, women living with women year after year.") Robin is brought up by her austere grandmother and a doting and slightly dotty great-aunt. The money is ample and, more important, old. "Once,

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trying to explain the fascination the diaries and journals of the first settlers held for her, she had said to Jeff: I come from an old family." Jeffrey's parents are, well, hopelessly attached to *things* ("it comes from being uprooted"), having recently moved eastward from West End Avenue and up from who knows what ghetto before that. His schizophrenic brother killed himself. Jeff wants to get married; Robin is fearful. She hates blood, a recurrent if pointless symbol in the novel: menstrual blood, blood ties, blood of animals. In the country where she and Jeff are building their nest ("to build was to dwell"), she saves a young calf from the slaughter but he grows up to be a bull and gores a dog. Robin should have kept a dog for a pet in the first place, as one of the country characters tells her, in perhaps the wisest line of the book. Try as one might, Mother Nature won't be fooled, not even by Gran who dies, leaving Robin a million dollars. For inexplicable reasons Robin is shocked to be her heir. But it's all right because she will give it all away. Mom goes off to Arizona with her nurse, and Jeff comes to Gran's to sleep.

Maxine Kumin uses a lot of literary devices—sections from Jeffrey's Peace Corps journal; symbol and metaphor applied like band-aids or perhaps tourniquets—to mask the essential banality of her plot. They are not enough. She is fond of words like "argufy" and "horripilate" ("she read still omnivorously, horripilated by modern fiction, yet determined to keep abreast"). She has an unerring eye for the inept simile: "from the rafters vegetables hung down as simply as shoelaces" and "the porcelain cup and saucer rode in his left hand as easily as a sailboat at its moorings," to cite two. She also likes to pass on aphoristic wisdom, better when it comes by way of Thoreau, whom she quotes frequently, than from the author. Here are three examples of hers: "the art of capitulation is grace"; "the real primal scene is the first time you have to be a parent to your parent. The first time you have to be the forgiver"; and, "love means different things to different people." (Lest we forget, love also means never having to say you're sorry, and *pace,* Erich.) When Robin is told, "your head is a bank vault stuffed full of useless aphorisms," the reader cheers.

Such infelicities might not be so surprising in a creative writing student, but Kumin is an experienced, indeed an honored, writer. She won the Pulitzer Prize for poetry in 1973 for *Up Country: Poems of New England,* and *Poetry* magazine's Eunice Tietjens Memorial Prize the year before. Altogether she has published four books of poems and four novels. She has lectured in English at various Massachusetts colleges, and is now translating some contemporary French women poets. Clearly she is not an amateur, which is why I read this book twice, thinking, hoping that I'd missed something the first time. But no. I didn't believe it the second time either. *The Designated Heir* is a marshmallow of a book—sticky, sweet and soft in the center, and suitable for roasting.

William McPherson

WILLIAM MCPHERSON *is the editor of* The Washington Post Book World.

Meaner Streets

Seven Long Times by Piri Thomas

(Praeger; $7.95)

In 1970 Piri Thomas wrote *Down These Mean Streets,* a book about the life of a dark-skinned Puerto Rican in New York's barrio—himself—that won him praise and fame, and deservedly so, for it was a document about a special condition, a special place, a special man. It was dense with the specificity of his world, of his head, of the forces that played on them both, and it was told in a quasi-poetic argot that suited the material, added to the density. In one 70-page segment of that book Thomas recounted how he and three others held up a nightclub, how he was shot by a cop, shot the cop in return, fled, was captured, sent to the Tombs, was given 5 to 15, and served about seven, briefly in Sing Sing, the main time in Comstock.

Thomas has now, in the age of Attica, resurrected the essence of those 70 pages, retitled it *Seven Long Times* and told the story all over again, this time in 258 pages. Fans of Thomas' first book, if they've forgotten the first telling, may enjoy listening to his new sounds:

> *Have you ever sensed the coming danger as on a bop you go? A rumbling of bravery, of* puro corazon, *and gusto the nth degree? Have you ever punched a guy in the mouth with a ripped-off garbage can handle, or spit blood from jammed-up lips? Have you ever felt the pain from a kick in the balls? Have you ever chased in victory in a gang fight supreme or run in tasteless defeat with all the heart you can muster?*

Weird syntax here; the *Time* inversion at work. Thomas is putting on a front for us, giving us the backhanded slap of his poetry. He concludes his overture to the new work on a poetically defiant, self-pitying note:

> *You don't want to hear me. I'll make you hear me.*
>
> *You don't want to see me. I'll make you see me.*
>
> *I'm no nuttin' that's gotta disappear. I'm not just another light bulb that will soon blow out.*
>
> *I got a hurt that screams. . . .*

But we've been there before, with Piri Thomas and his gut music, and we bought it first time around. Now it is a dull echo. A second pot of tea made from the same teabag; but he doesn't seem to see that. He writes the new book as if the first one never existed. Worse, he relies on sentiment instead of specific thought, on generalizations instead of the fine detail that he lavished on the first work.

There is justification of a sort in any book that sees prison from the inside, because the public ignorance of life in a place like Comstock is so bottomless. And Thomas came to writing in Comstock, partly as a way up from the bottom but also to report on that life inside. A fellow con tells him:

> *Brother, your kind of talent is most needed. 'Cause a human can shout off some soapbox in the middle of the prison yard and it reaches just so far, but putting all this inhumanity into writings, you can reach out to the whole world.*

Thomas does have some good moments: the Comstock riot of August 1955, for instance. He treated it in the first book and spoke of his own unwillingness to join the futile riot, a decision that probably saved him from nine more years. He avoids that personal issue in the second telling, but focuses sharply on the riot's aftermath, the ritual punishment of the rioters:

> *The beatings in cells went on for*

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hours, for days. Word came through that the prison doctor had asked the guards not to bring any more beaten inmates to the hospital. He would attend to their wounds in their cells. We heard reports of a guard captain breaking the arms of inmates over his knee the way a sword is snapped after a court-martial.

The new book is more of a polemic than the first, an argument for meaningful rehabilitation of prisoners. Thomas was trained in jail as a brick mason but finds out that when he's paroled he can't get past the union. He illuminates the racial divisions within the prison life, the blacks denied privileged jobs, the whites granted easier paroles. He has a fight with a white barber who refuses him and says his hair is too tough. "It dulls the scissors and ruins them for white hair."

He is also good on the necessity for aggressive behavior, for any passive con will surely be raped and pillaged in every way. His own prison life is represented as a struggle against homosexual aggression from others, which he epitomizes in a line:

Listen . . . I'm a man, diggit. I came in here my father's son and I'll be damned if I go out my mother's daughter.

But for all the good touches, there are long stretches of banality, renderings of the overfamiliar and no really individualized style, structure or vision. His guards are uniformly evil (in the earlier book he found some good in at least one guard), and his vision of himself is as a total victim of society. The environment has failed him, and there is no real awareness in him that personal failures also account for the behavior that leads a man to prison.

I don't mean to patronize Thomas. He did seven years and he knows what the life is better than I'll ever know. But with this new book he doesn't get it down. *Seven Long Times* lacks specificity of life and of minds and stands as a timely but shallow use of leftover experience.

William Kennedy

WILLIAM KENNEDY *has just finished a new novel based on the life of Jack "Legs" Diamond.*

Sense of Justice

Test of Loyalty
by Peter Schrag

(Simon & Schuster; $9.95)

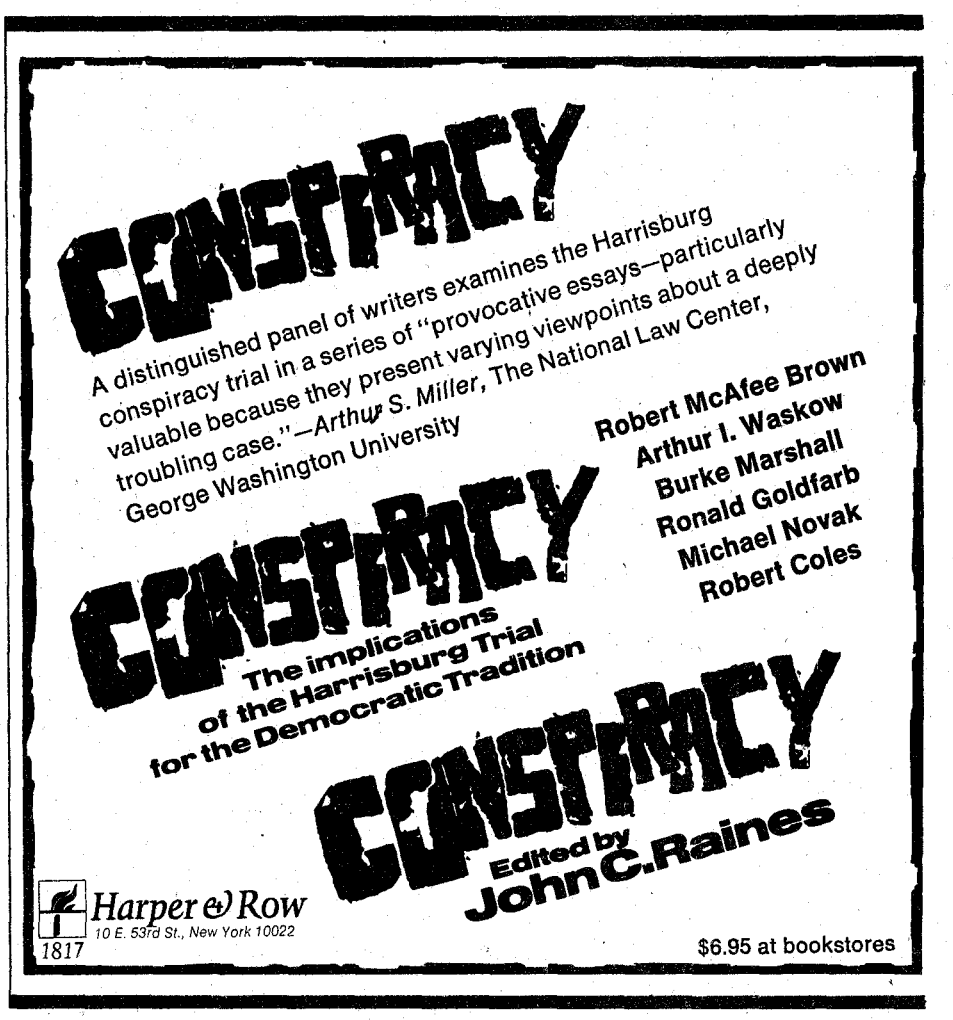
Peter Schrag's new book is primarily an account of the Ellsberg-Russo Pentagon papers trial. It was a trial that was extremely difficult to follow. Begun, delayed, begun again with a new jury, 15 wide-ranging counts against the defendants had to be addressed. The defense wanted to educate the nation, and gain acquittals. The government as well attempted to use the trial to make its point to the nation.

The book is also an account of "the rituals of secret government." Schrag puts the trial in a context that gives demonic pattern and continuity to the administration's thinking and actions. With the Watergate wake still churning, Schrag found it difficult to stop writing and let the book stand; the story of this trial and the government's machinations will resonate with every statement the administration makes. It turns the President's attempt to take the wiretapping monkey off Kissinger's back into another piece of disingenuousness.

The story begins soon after the changeover from Johnson to Nixon, when Ellsberg, as a member of a study group employed by the Rand Corporation, submitted to Kissinger National Security Study Memorandum Number One, which analyzed policy options for Vietnam. Among the options in the draft given to Kissinger was unequivocal American withdrawal. According to Schrag it was an option deleted by Kissinger before the study was passed to the full National Security Council.

Thus was Ellsberg's disillusionment with the policymakers completed. For two years he had anguished over the sufferings of the Vietnamese. He had tried to work through channels to bring about a change in policy. As a consultant to the new President's National Security staff, he got nowhere. Convinced that Nixon was determined to prolong the war so that we could lose so slowly and gradually as not to seem to lose, he decided that the best hopes for ending the war lay with Congress and the public.

In October 1969 Ellsberg began to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xerox the 47-volume study of US involvement in Vietnam. The study had been suggested in 1967 by Ellsberg and later ordered by McNamara. Thirty-six scholars had contributed to it; some of them, including Morton Halperin and Leslie Gelb, were in the Defense Department, some were in universities, and some, like Ellsberg, worked for Rand. The study was completed in January of 1969. In August Ellsberg had copies of 18 of the volumes in his safe at Rand in Santa Monica. Copies of the remaining volumes were made from the complete set held by Rand, which an employee with the appropriate security clearance could routinely check out. At the trial a major defense argument was that the "stolen" documents were not the property of the government.

The delivery to the *Times* did not occur until after Ellsberg had tried other avenues. He tried to interest Sens. Fulbright, Goodell and McGovern in the papers; he wrote and lectured on the contents of the papers. But policy was unaffected primarily because the Nixon strategy on Vietnam was working and US involvement and casualties were going down. When Ellsberg gave the papers to the *Times* in the spring of 1971, the administration could have ignored the matter and found satisfaction in what its policy had achieved. Sooner or later the war would be off its hands; the papers dealt mostly with the origins of the war.

Schrag believes that the seeking of injunctions against publication and the indictments against Ellsberg was a wholly irrational response:

> *It was Kissinger who started the panic. The concern was not merely the contents—virtually no one in the Administration had any idea what the Papers contained—but the source, the magnitude, and the principle . . . The offense was against order itself, and particularly Henry Kissinger's particular sense of the order required for the proper management of foreign affairs.*

In the summer of 1971, Schrag writes, with Muskie leading Nixon in the polls, the White House was eager to find a Democratic scandal. There was hope that the disclosure of the Pentagon papers could be made into a story of Democratic treachery. Halperin, who had been deputy assistant secretary of Defense for international security affairs, was associated with Muskie. He was placed on the enemies list, with the

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notation: "A scandal would be most helpful here." The possibilities were rich, and so Ehrlichman was given the job of forming a "special unit" and Colson hired Hunt.

Ellsberg and his copying-accomplice, Anthony Russo, were indicted on 15 counts, the most serious being violation of the Espionage Law. In order to prove this the government had to show that the Pentagon papers related to national defense. They could not do it. The era in which "national defense" was automatic authorization for any governmental act was at an end. Ironically the Ellsberg argument that the papers were political and not related to the national defense was successful largely because Kennedy-Johnson defense and foreign affairs officials, the very men who had helped develop Vietnam policy, testified that the papers were of no value to a foreign government. Two generals testified for the government that any documents revealing the inner workings of the national security establishment would be useful to the enemy, but they were routed by the dissenting views of McGeorge Bundy, Schlesinger, Galbraith, Halperin and Allen S. Whiting.

The trial was brought to its climax by the argument that the same government that was prosecuting Ellsberg and Russo was withholding evidence that might be exculpatory. The Defense Department's general counsel's office, headed by J. Fred Buzhardt, had carried out studies of the national defense aspects of the papers. The conclusions were that at the time of their release the Pentagon papers would have no effect on the national defense. The prosecution as an agent of the government had failed to make these studies in the possession of the government known to the court. Then in the course of the Watergate hearings it was learned that among the material taken from the White House safe of Hunt and burned by L. Patrick Gray was a folder labeled "Ellsberg." It was also learned that the government was in possession of a wiretap of Ellsberg. During the period in which the staff of the National Security Council was being tapped, the period in which Halperin was working for Kissinger, Ellsberg was a guest in Halperin's home and used the phone. The government had the log. Judge Byrne ordered the prosecution to produce the log. But who in the government had it?

Ordinarily it would have remained with the FBI. But Schrag says the tap on Halperin was carried out against the wishes of J. Edgar Hoover and that Deputy Director William Sullivan had the log placed in Ehrlichman's White House safe. It was kept out of Hoover's range for fear that when pressed to retire Hoover might use the Halperin tap as a weapon against the administration. Schrag also claims that the government notified Judge Byrne of the existence of the tap log on Ellsberg in order to give the Ellsberg defense an opportunity to demand a dismissal of the case. For the White House wanted to stop the investigations Judge Byrne had ordered in regard to other evidence. The White House now was willing to dispense with the punishment of Ellsberg in order that its web of clandestine activities would not be revealed.

Presiding over the trial was a young judge whom the government expected to be sympathetic to the need for conviction. Although Matthew Byrne let himself be persuaded into making a visit to San Clemente during the trial, he was determined to see to it that the defendants received a fair trial and to hold off against defense attempts to bulldoze for dismissal when the prosecution was in disarray. But with all the government misconduct that came to light Byrne found that he could no longer claim that the rights of the defendants had been protected. His statement ordering the dismissal is elegant in its candor and simplicity. "The totality of the circumstances of this case offend a sense of justice." His orders to the government to produce all the evidence it had he acknowledges to be futile:

> *No investigation is likely to provide satisfactory answers where improper government conduct has been shielded so long from public view and where the government advises the Court that pertinent files are missing or destroyed.*

Schrag is reluctant to praise Byrne, wary of his ambition, suspicious of his golden-boy image. But amidst legal chaos Byrne did a fine job with this trial. Schrag also finds it difficult to respect, let alone honor, Ellsberg. It is a passion of our age to question anyone who claims to be disinterested, whose actions appear to be generous or courageous. Ulterior motives are sought, emotional compulsions suggested. Ellsberg had been a "defense intellectual,"

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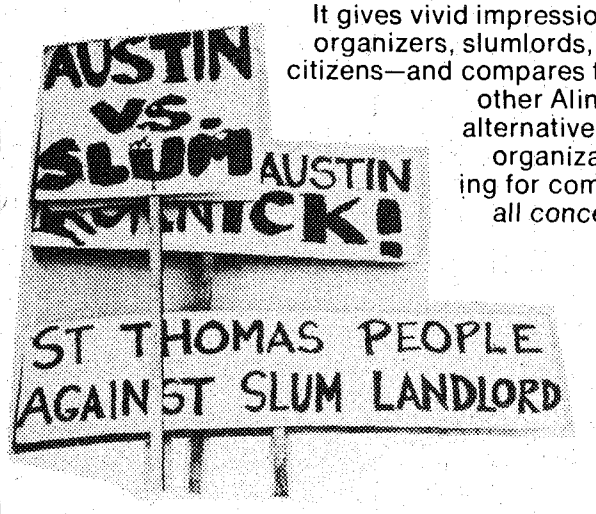

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had stumbled for a while in his private life, and he had known what he knew for some time before he acted. But he did act, and in so doing risked years in prison. Heroes don't come along very often. If we are left with none, we invent them.

Paul Marx

PAUL MARX *is professor of English at the University of New Haven, Conn.*

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That's Show Biz

Emlyn
by Emlyn Williams

(Viking; $10)

In the second volume of his memoirs (1927-1935) Emlyn Williams carries forward the elaborate story of an earnest young Welshman who would be important and is bent on succeeding before old age—the shady side of 30—claims him. Like D. H. Lawrence, Williams grew up in a divided though never broken home. His mother was scrimping and pessimistic. His father, a miner turned greengrocer, was given to drinking, a hopefulness no misfortune could puncture, and a gregariousness that charmed both sexes. Williams admired him and was attracted to other men whose forte was dodging responsibility. His now-it-can-be-told story about two of them has a frankness that probably would have saddled him with a court action back in the 1920s if Radclyffe Hall's *The Well of Loneliness* is an indicator.

Whatever his sexual inclinations, he was no woman-hater. It was an unmarried Yorkshire schoolteacher, a "striding, clear-voiced power-house" and the source of the Ethel Barrymore role in *The Corn Is Green*, who set him on the track of scholarships and shouldered the bills of his Oxford education. At Oxford a male friendship more intense on his side than on his companion's precipitated a nervous breakdown. But he turned a profit from this near-disaster, wrote a play during his convalescence and, despite featherweight royalties, knew he was henceforth a professional author. Riding two horses as actor-playwright and a third as he begins to direct, he takes a spill now and then. The last page of *Emlyn* finds him on the brink of 30, poised for his most brilliant success or most painful failure as the curtain rises on his newest play, *Night Must Fall*.

Volume III will undoubtedly show that *Night Must Fall* was a literary property a bit less rich than the Kimberley diamond mines but valuable enough to assure that he'd never repeat his early struggles. Failure, however, often makes a more compelling tale than success and it is the misfortunes of Williams' private life that hold the reader above all else. The young Welshman of *Emlyn* was both homosexual and heterosexual and, as he learned more about himself, was trying to escape his divisiveness. Bill Wilson, an actor in his 40s, drank himself out of Williams' favor and they parted. Wilson's sudden fatal illness was a horror to Williams, reminding him that he had neglected his friend. With Fess Griffith, a country boy from Wales, there developed a relationship that Williams sentimentalized because Fess had lived with Wilson. The sentimentality began to evaporate when Williams discovered that one of his checks had been altered by the country boy. Though it was easy to throw Fess out into the cold for lacking the indispensable virtue of the parasite—loyalty—exorcising his spiritual hold was harder. One solution was to pretend that Fess was a thoroughgoing villain, transforming him into the Dan of *Night Must Fall*, who carried the head of his latest victim in a hat box.

Jacob Epstein, celebrated for his statue of Oscar Wilde and who also did a bust of Williams, must have sensed his sexual dualism. "Strange," Epstein muttered during one of their sessions, "I have always found that the face of every male sitter has one profile masculine and the other feminine. I've rarely seen it so marked as in this one." Williams offers no comment on this judgment. Nor does he attempt to analyze those mixed traits in his work that Virginia Woolf would have designated as androgynous. To Virginia Woolf the androgynous traits of a Shakespeare, Keats, Lamb, Cowper, Coleridge or Proust were to be honored for giving peculiar breadth to all that they wrote. To Williams, on the contrary, being a soul divided was a nuisance no matter what it did for his art, but the happy marriage he finally achieved promised an end to his emotional struggles since the Oxford breakdown.

In his craft as autobiographer, and partly in his outlook, Williams is old-fashioned, suggesting throughout that the task of the worker in the arts is to be up and doing rather than playing intellectual games—going in, say, for constant introspection. Williams in fact

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onfesses his anti-intellectual bias, admits that the Shavian theater and its dialectics bored him, and rarely pauses in his storytelling to glance at his motives or others'. Fortunately he not only has a narrative gift but also fascinating material resurrected from diaries and letters and turned to urbane and witty uses. The impersonator of Dickens—Williams has staged Dickens readings on both sides of the Atlantic—brings warm and tolerant judgments to bear on all but a few of *Emlyn*'s "characters." His spare yet graceful and sometimes idiosyncratic prose, however, is of our day rather than Victoria's.

James Walt

JAMES WALT *teaches English at the University of Maryland.*

Kiss Hollywood Good-by by Anita Loos

(Viking; $8.95)

Anita Loos has written the second half of her autobiography, titled *Kiss Hollywood Good-by*. The first half, *A Girl Like I*, covered Anita's adventures with the silent movies. During these she sat at the knee of D. W. Griffith, who was ever on the lookout for the birth of a notion, and Anita was always *enceinte*.

I doubt that Anita has called it quits with Hollywood. She knows too much about movies that she learned from the master producer Irving Thalberg. I prefer to think she has merely called time out while she finished her engaging autobiography. She had left Hollywood once before but returned again in 1931 when she signed up with MGM and was a main prop to the box office. Among her hits were *Saratoga, San Francisco* and *The Red Headed Woman*. She was responsible for giving Jean Harlow an opportunity. She encouraged a free-lancer, Robert Hopkins (Hoppy), who stuttered, couldn't write, but had shiny ideas that she developed and they paid off. When she found time she wrote *Gentlemen Prefer Blondes*, which ran into 85 editions. During the printing of the Chinese edition Anita asked Dr. Lin Yutang why the Chinese leaned toward a blonde when they were so brunette a nation. Dr. Yutang replied that being blonde was an incident of pigmentation. A brunette could have a blonde point of view. Winston Churchhill, it is said, kept the book on his bedside table and James Joyce, no less, read it despite his waning eyesight.

Anita earned enough to be fabulously wealthy, if she hadn't been yoked to John Emerson, who like Colette's Willy would not let her go. He appropriated her work, appending his signature to whatever was profitable. Emerson, who had discovered Douglas Fairbanks, was a somewhat dashing but unscrupulous fellow. He persuaded Griffith to let him be a director. John Emerson's tentacles is one of the themes of Anita's book.

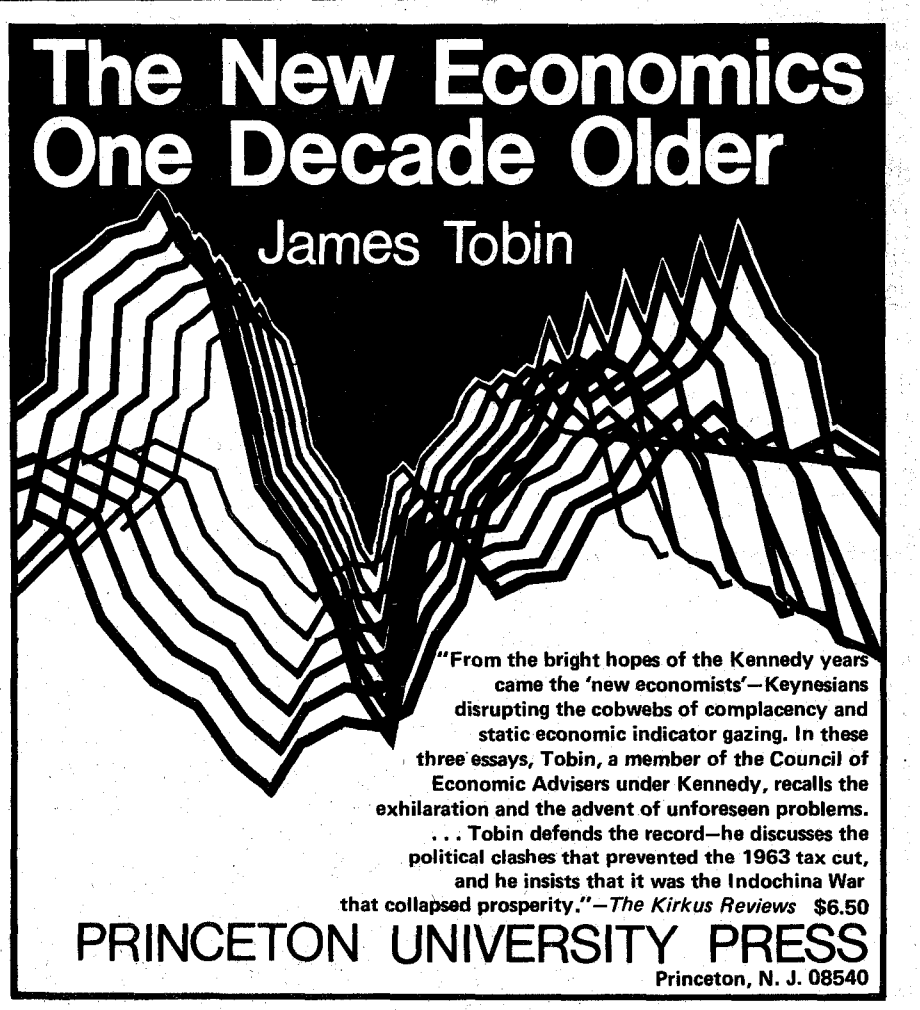
Anita had many enthusiastic fans outside the movie studios. She went to all the resorts, Palm Beach, Honolulu, the French Riviera. Wilson Mizner was a close friend. Wilson and his brother Addison were full of *bon mots* such as "the son-of-a-bitch would shoot me just to make book on the way I'd fall." Wilson took dope, but he was able to take it or leave it.

William Randolph Hearst created the background for his mistress, Marion Davies, the ranch at San Simeon, which provided a most diverting scene for enjoyment. Anita tells about the old masters hanging on the walls, Rembrandt, Goya, alongside a portrait of Marion by Howard Chandler Christie which had been a cover on *Cosmopolitan* magazine. The ranch was halfway between Los Angeles and San Francisco, 16 miles from the main road. Caged wild animals lined the way, startling to a casual guest. Mr. Hearst didn't allow drinking on his ranch, but half the guests were under the "influence," having hidden the drink in lampshades and other ingenious places.

The guests were many and Anita has names to fill up any chapter. An English viscount, Lord d'Albernon, was in love with her and proposed, but Anita refused him and they went bravely on as before. His Lordship died just before he could keep a tryst with Anita that might have changed this.

Among those who are mentioned in the book are Margot Asquith, the wife of the British Prime Minister, who told Anita that her sympathy and understanding had been "healing," and Aldous Huxley, who wrote to her asking for an appointment. Scott Fitzgerald wrote a poem about her:

"This book tells that Anita Loos
Is a friend of Caesar, a friend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of Zeus
Of Samuel Goldwyn and Mother
Goose, etc."

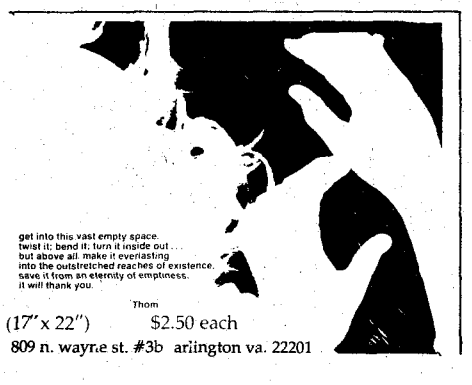
Anita makes some surprising insinuations in her vivid copy. One of them casts aspersions on Clark Gable's virility. The girls will line up in his defense.

Among those given space are John Gilbert, who was swept to suicide when the talkies came in (he had a big affair with Greta Garbo and he married Ina Claire) and Joan Crawford, the longest lasting movie star. Others in Anita's star-studded life were Howard Hughes, a billionaire who produced *Hell's Angels;* Constance Talmadge, "Dutch," who was game for anything; Clara Bow, the "it" girl; Carole Lombard, who was the understanding mate of Gable; Lady Mendl, who asked what lesbians do, and Tallulah, who replied, "if Elsie doesn't know what lesbians do, who does?" There's George Gershwin, who played the piano all his tragically short life; Fred Astaire, who gave tap dancing lessons to the Prince of Wales; Rudolph Valentino, who had a sensational funeral; Ruth Kresge, who courted deafness into charisma; Evelyn McLean, owner of the Hope diamond; Joe Frisco, who ordered apple pie and when they told him there was none, said "then fake it."

Anita is a dazzler, a dark-eyed diminutive houri, a slip of a girl, but measured in human traits, she's as tall as Wilt Chamberlain. Her gusto and appetite for life never seem to fade. A girl's best friend, when the girl is Anita Loos, is not diamonds, but wit. There are no diamonds that could compensate for the fantastic reward of endless, amusing "dining out" stories that gush from her as from an oil well. You might find *Kiss Hollywood Good-by* better than an evening watching the $25,000 Quiz, so buy it.

Howard Dietz

HOWARD DIETZ *is the well known librettist of* The Bandwagon *and* Three's A Crowd.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On Dying, and Other Matters

Doris Grumbach

The number of books on the fine and tragic art of dying has increased recently. We have had Stewart Alsop's *Stay of Execution,* the account of Brian Piccolo's death, and before those, parental accounts by John Gunther, Josh Greenfield, James Wechsler of tragic deaths of their sons. How one dies, what brave faces we, and the dying, are capable of wearing before the imminent or actual Real Thing, as Henry James called it, is this year the subject of more books than one column could possibly accommodate.

Having said all that, I would mention a recent novel by Hilma Wolitzer called **Ending** (Morrow; $6.95), in which a young wife narrates the life and death, from cancer, of her young husband. So successful (and Lord, so painful!) is the progress of this sparingly written book ("Cleanly written," was the way Maxine Kumin has described the style) that I forgot it was fiction, and began to think of it as Mrs. Wolitzer's own story, which it is not, so far as I know. It is a book well worth your time, if you can bring yourself to still another description of the horrors of dying by cancer, but more especially if you admire good writing.

While I am on the subject, and because I will not have space to return to it again this fall, I have seen an advance reading copy of Lippincott's **Eric,** by Doris Lund, which is sure to find enthusiastic readers. Mrs. Lund tells of the brave fight her teenaged son and his whole family put up against Eric's leukemia. Parts of the book have already appeared in periodicals so I feel no guilt at observing here that, although this narrative resembles so many others of which John Gunther's *Death, Be Not Proud* is the progenitor, it is still likely to be read avidly by many persons whose longevity somehow takes on greater value when they read of the waste, by death, of so much young promise. On Eric's blackboard in his room during the last year of his life were the words of G. K. Chesterton: "We are all in the same boat, in a stormy sea, and we owe each other a terrible loyalty."

There are two kinds of books that may be thought of as emblemic of the mid-'70s: the instant book and the book written-to-order. An example of the first: Dell has announced the imminent appearance of **The Senate Watergate Report, I and II,** books on the same order as "the legendary paperback" *The Presidential Transcripts,* which the same company put out (instantly) *last* month. In two volumes, both appearing within a week of each other at the end of July, the first costing $2.75, the second $2.25, these books contain the "complete and final report of the Senate Select Committee on Presidential Campaign Activities," the document on which the House Judiciary Committee will decide the case of Richard M. Nixon. Daniel Schorr, the now famous enemy of the President, has written introductions to both volumes. My calendar shows that Dell will have accomplished this instant feat within two weeks after the Ervin committee produced its report. Short of appearing simultaneously, nothing more *instanta* could be expected.

And the second kind of book, the written-to-order one: the National Endowment for the Humanities decided to underwrite the publication of "official" state histories, 51 of them, to celebrate the bicentennial. Even the non-state District of Columbia will rate a volume. Emphasis will be on "individualistic interpretation of a state's history." Each volume will contain a photo essay. Writers have already been put under contract to "do" their states, among them Bruce Catton (Michigan), Louis B

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GRACE BEACHAM FREEMAN *teaches poetry in the Rock Hill, SC school system.*

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Wright (South Carolina), Jay Saunders Redding (Delaware). Norton will publish the series that will be offered as a set, as well as individually, in cloth and in paper. Endowment chairman Ronald A. Berman is certain that the series "will provide citizens throughout the country with serious, thought-provoking and readable material designed to demonstrate the significance of the Bicentennial observance for every State." Fervently let us hope so.

In the last month two periodicals of interest have announced their own demise. The first, **Lillabulero,** died serenely uttering the gentle, quiet farewell one might expect of a New England journal of letters. "Why end a magazine?" after 14 issues in existence, editors Russell Banks and William Matthews inquire. Their reply: "It seems obvious that every magazine has a natural life expectancy—and especially short are the lifetimes of magazines dependent on the willful tastes and energies of four or two editors, rather than of a large editorial board . . . there are personal reasons, including fatigue, other projects, the editors' own writing lives . . . founding and editing a literary magazine allows the editors to teach themselves things they can't learn any other way. After a while they have learned these things . . . we now believe we have either learned them, or cannot."

The final issue is a distinguished one, containing the prose and poetry of such writers as Charles Wright, David Ignatow and Frederick Busch.

The second periodical scheduled for oblivion is **The Antioch Review;** this month it follows the *Kenyon Review* into extinction. Antioch College in Yellow Springs, Ohio has been the home of the *Review* for 34 years, a long time for a literary quarterly to endure. Originally its pages contained articles heavily political in subject matter with much concern for educational policies, most of them considered to be radical. But six years ago the publication acquired a new editor, Lawrence Grauman, Jr., and with him a literary emphasis. The college supported the *Review* with a healthy yearly subsidy. Now, with declining enrollment and income, it has decided to abandon the publication. Grauman's efforts to save it by appealing to the subscribers and by application for grants were regarded with a cold eye by the advisory board of the magazine and by the college president who fired the editor. Torn internally, severely tried by the college's own financial bind, and despite the award to the *Review* of grant funds, there seems little chance for its survival. It may be that these small, prestigious reviews do have a short life expectancy, as the editors of *Lillabulero* say. Too bad. Both were worthy journals; both deserved a longer life.

At the First NY Book Fair for small presses, I saw a copy of *The Publish-It-Yourself Handbook,* edited by Bill Henderson, under the imprint of the Pushcart Book Press (1085 Warburton Ave., Yonkers, NY 10701; $4). It is a paperback that should be in the hands of anyone who wants to be published, who considers himself "in the individualistic tradition of the American dream," which is, presumably, to be in print. The how-to pages at the back of the handbook are especially useful, but I liked the essays that compose the bulk of the book, written by people like Alan Swallow, Anaïs Nin, Leonard Woolf (on his Hogarth Press) and Stewart Brand (on *The Whole Earth Catalog).* Taken together, these essays, and the introductory section about famous writers (Walt Whitman, Edgar Allen Poe, Thomas Paine, Bobby Burns, Shelley, William Blake, etc.) who were in the publish-your-own-work tradition, make a good anthology and a useful workbook.

Kauffmann, *from page 20*

The result inevitably is a strong anarchic component in the American psyche, the sneaking suspicion that law is for weaklings, that ultimately you will be approved for doing your own justice. This belief is much more significant, more *American,* I think, than the subject of violence itself, which is international and ancient. From *The Great Train Robbery* on, the Western has been a favorite genre because men were men and settled their own scores. Now as the rituals of the Western become in themselves a bit well rubbed, the idea moves East *(Death Wish)* and the avenger sometimes even becomes a policeman as cover *(Walking Tall).* But abiding underneath is the conservative idea of the individual's responsibility for himself and the psychic-hormonal drive to manifest and to increase maleness.

Bronson and his colleagues understand this anarchy-mode very well. They exploit it well. It may be that the success of his Westerns and his gangster flicks, like those of Eastwood and others, is less due to universal aggression hunger than to the hunger in countries constricted socially and physically for the chance to settle one's own fate. The one sound element in *Mr. Majestyk* is that Bronson battles the Mafia, another extra-legal justice system, while the police watch. Sicily, the home of the Mafia, is the only other country I know where one can make a native, nonimitative "Western," as Pietro Germi showed with *In the Name of the Law* (1949).

If you have never seen Bronson, *Death Wish* is the one to see. The script is tolerable, and the director, Michael Winner, is a fairly glib imitator of his betters. You'll miss the "in" joke if it's your first Bronson—this outlaw with an office job and a Riverside Drive apartment, *learning* how to kill. But you may feel, as I do, Bronson's appeal and the sense that what you are seeing is what you, figuratively, asked for. He has something of the honest tradesman. You like anarchy? You paid your money, here it is. Two hours' worth. Thank you, call again.

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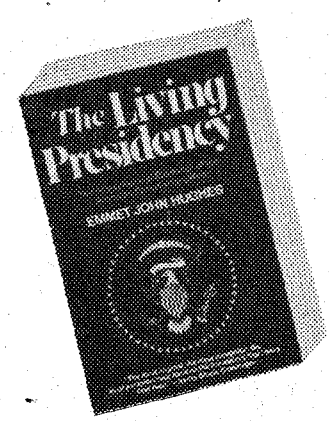

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After school each Wednesday, Peter comes to Charles' office where they begin each session with class work. It may be reading, writing, arithmetic—or any other subject Peter needs help with. Charles goes over Peter's homework assignments. Helps him bone up for tests. They even talk about Charles' responsibilities as an Exxon manpower planning and placement analyst—and Peter's responsibilities as a leader on the school basketball team.

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